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10:00 a.m.

CHAIRMAN AGUERO: This morning we will continue with the Joint Sports Claimants and the witness will be Doctor Samuel H. Book.

Good morning, Mr. Book.

THE WITNESS: Good morning.

Whereupon,

SAMUEL H. BOOK

was called as a witness by Counsel for the Joint Sports Claimants, and having been first duly sworn, assumed the witness stand, was examined and testified as follows:

CHAIRMAN AGUERO: Mr. Garrett.

MR. GARRETT: Thank you, Mr. Chairman.

DIRECT EXAMINATION

BY MR. GARRETT:

Q Doctor Book, would you state your name, position and current business address for the record, please?

A Yes, it's Samuel, S-A-M-U-E-L, H. Book, 0-0-0-K. I'm with the firm of Malarkey-Taylor Associates. That's M-A-L-A-R-K-E-Y, Taylor, T-A-Y-L-O-R, located on -- at 1130 Connecticut Avenue in the District.

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I joined the firm for the purpose of establishing a market research division, which I did, and then have continued to head up that division. The work that I do and my division does is primarily in the area of market research surveys. We conduct surveys for cable television firms and for these other types of organizations that I've just mentioned, governments, financial institutions, et cetera. The market research surveys that we do are both based on surveys of customers, that is end user surveys, and surveys of executives, people in managerial executive positions. We also do focus group research and various other types of research studies.

In addition to the market research work that I do, my division provides marketing consulting to the cable industry and related industries and economic analysis. In particular, we do quite a bit of work in the area that's called feasibility studies. We do feasibility studies, again, both domestically for organizations in the U.S. and we do feasibility studies abroad in countries that are considering cable television. These are studies of the feasibility of cable TV in foreign countries.

Q Could you identify some of the clients for whom you've worked, Doctor Book?

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Q What is your position with Malarkey-Taylor?

A I'm the head of the firm's market research division.

Q Could you briefly describe the nature of the business in which Malarkey-Taylor is engaged?

A Malarkey-Taylor is a cable television consulting and research firm. The firm has been providing research and consulting services to the cable television industry and related industries for over 25 years now. I believe that Malarkey-Taylor is the country's most experienced, longest running cable consultancy. We provide services to cable television operators, cable television programmings, financial institutions, and other firms that are either interest in or in some way related to telecommunications, in particular cable. And we also provide consulting services to government agencies, both in the U.S. and to foreign governments and companies abroad.

Q And how long have you been with Malarkey-Taylor?

A I've been with the firm for five years now.

Q Could you describe briefly the nature of your work at Malarkey-Taylor?

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A Within the past five years at Malarkey-Taylor, I have -- well, first of all, the firm has worked for practically every cable television company at some point or other. And in terms of my own involvement in work at Malarkey-Taylor, I've done studies or provided consulting to at least eight of the top ten cable MSOs. These are the multiple system operators that are the major operators throughout the country and probably for a total of at least 30 of the 50 largest cable MSOs.

We also have done work for cable programmers. These are the companies like HBO and Showtime, and some of the basic cable services that provide the programming for cable television. And we've also done work for either government agencies in -- that is through the franchising or refranchising process, or firms outside of the industry that are looking to become involved in cable.

I can mention some of the names if that would help?

Q Well, just briefly for the record identify some of the specific cable MSOs for whom you've done survey research.

A I've done surveys or survey research projects for Continental Cablevision, that's out of

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Boston; Comcast Cable Communications, their headquarters is in Philadelphia; TCI, that's Telecommunications, Inc. which is the largest cable MSO, out of Denver; ATC which is a unit of Time-warner, they're also out of Denver; and also Warner Cable which is another unit of Time-Warner, they're out of Columbus, Ohio. I've done work for an MSO called Cablevision Industries that's headquartered in Liberty, New York; and another one that's called Cable Vision Systems that's in Long Island, New York. There are probably a few other within the top ten that I mentiOned. Viacom would be another, Viacom Cable out of California near San Francisco.

14 Q You mention on page 1 of your testimony that you've also done work for United Video, is that correct?

A Yes, now that's on the programming side. We've done work for cable programmers that would include United Video, provides programming including WGN to cable operators. And others would be Tribune Broadcasting which is a unit of the Chicago Tribune Company; Showtime, a unit of Viacom International, that's the company that provides Showtime and The Movie Channel premium services; and a few of the basic cable programmers like American Movie Classics that

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provides basic cable programming.

Also done some work for ones that the names would not be familiar. These are new start-up programming services that are in the process of -- of becoming a provider of programming to the cable industry.

Q And you've done survey work for all of the various clients who you've just identified?

A Yes, these were all clients for whom we've done some type of a market research survey.

Q Would you briefly describe your work experience prior to joining Malarkey-Taylor?

A In 1980 I was with a company called the National Research Group in Los Angeles, Hollywood, California. And I was with them as the Director -- the Research Director for three and a half to four years. The -- that company was involved in -- well, they were the leading company, probably the only company, that was doing movie market research. We basically did surveys for the movie industry, for the studios. Our clients were the -- the large movie studios as well as independent producers and we did a large number of surveys, pretty much almost on a daily basis of surveys of movie goers about new movies or older movies on behalf of the studios. And I was

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the director of that, the Research Director of that company. I designed and implemented, oh I think I once did a quick count and it came to something like over 500 different surveys of -- that had something to do with the movies.

■ I'm sorry, what kinds of surveys are these?

A The -- there were a lot of different varieties. The sort of two largest categories were telephone surveys. We would interview a random sample nationwide, qualified by whatever the studio wanted, something to do with their movie going behavior, and ask questions about movies that are not yet released, movies that are about to come to the theaters, and ask them their likelihood of going to those movies, what they think they would like, dislike, about the movies. And that information was then used by the studio's marketing department primarily to develop the ad campaign, the commercials and billboards, and everything else that they do before they launch a movie.

We would also ask questions in these telephone surveys on occasion about movies that are not -- that are still in some stage of production or even before they're produced. As in some cases, the

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objective of the survey was to assist the studio in deciding whether to make a certain movie or not, whether to go forward with a particular movie just based on a script and who the stars were going to be.

So, the purposes in some cases were existing movies and in some cases movies that were hoping to be. And then the other types of surveys were audience research.

Q Could you just briefly describe your educational background?

A I have a Ph.D. in economics from Columbia University in New York and I have a Bachelor's degree from Wilkes College in Wilkes Barre, Pennsylvania.

MR. GARRETT: I make the witness available for Voir Dire at this point.

CHAIRMAN AGUERO: MPAA, Mr. Lane.

MR. LANE: Thank you.

VOIR DIRE

BY MR. LANE:

Q Mr. Book, would you turn to your resume, please?

A Yes.

Q At the bottom, under speeches and presentations, it indicates that you spoke on techniques of cable viewer's viewership research at

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C-TAM seminar. Do you see that?

2 A Yes.

3 Q When was that seminar?

4 A I believe that was in 1987.

5 Q And could you describe for us in general

6 what you were discussing in that?

7 A Yes. That was a local C-TAM group that

8 consisted mostly of market research professionals,

9 people within the cable industry who are involved in

10 market research who lived in the Denver -- this was

11 given in Denver -- lived in the -- somewhere in the

12 Denver area and worked for cable companies in the

13 Denver area. I came as a guest speaker to that group

14 and spoke about methodology primarily, techniques and

15 methods of conducting viewership studies.

16 CHAIRMAN AGUERO: Can you clarify what C-

17 TAM means for us?

18 THE WITNESS: Yes, that's the -- I think

19 I can. Cable Television, the first two letters are

20 easy, Cable Television Administration and Marketing

21 Society. They left off the society. Yes. It's a--

22 a professional organization within the cable industry,

23 mostly for marketing people.

24 CHAIRMAN AGUERO: Thank you.

25 BY MR. LANE:

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Q Could you describe for us what cable

viewership techniques and methodologies you discussed?

3 A As best as I can remember, I spoke about

4 differences between the different types of surveys

that could be conducted, primarily telephone surveys

6 compared to mailed surveys where -- where a form is

mailed out to people and they're asked to fill it in

and send it back. And I discussed the technical

9 differences in terms of reliability, confidence, and

10 appropriateness of those two methods of conducting

11 surveys.

12 MR. LANE: Those are all the questions I

13 have, Mr. Chairman, on Voir Dire.

14 CHAIRMAN ADDEND: Music, Mr. Koenigsberg?

15 MR. KOENIGSBERG: Thank you, Mr. Chairman.

16 No questions of this witness.

17 CHAIRMAN AGUERO: NAB?

18 MS. BATTISTONI: We have no questions.

19 CHAIRMAN AGUERO: PBS, Mr. Olson?

20 MR. OLSON: Yes, a few questions, Mr.

21 Chairman.

22 CHAIRMAN AGUERO: Very good.

23 Mr. Tom Olson from PBS.

24 BY MR. OLSON:

25 Q Good morning.

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1 A Good morning.

2 Q Doctor Book, do you consider yourself an

3 expert in survey research?

4 A Yes.

5 Q You mention on the first page of your

6 written testimony that Malarkey-Taylor is the

7 country's oldest and most experienced consulting firm

specializing in cable television. What other firms

9 are there in the United States that consult in the

10 cable television business?

11 A Well, there are -- there are quite a few.

12 Most are firms that are broader based, firms such as

13 Arthur D. Little, Touche-Ross, many of the other large

14 accounting firms have divisions which provide

15 consulting to cable TV as well as to other industries.

16 And then there are smaller, more specialized firms

17 that provide consulting almost exclusively to cable.

18 Q And what are those smaller firms?

19 A Well, I can think of a few. There's a

20 firm in New York called Horowitz and Associates.

21 These are basically my competitors in a sense, that

22 do the same type of work that I do in the cable

23 industry. There's a firm in Denver called Gatseos.

24 Q How's that spelled?.

25 A G-A-T-S-E-O-S, and Associates. The firm

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1 that was BBC to Brown, Bortz, and Cottingham and Mr.

2 Bortz went off and formed Bortz and Associates, also,

3 of course, provides consulting and research work for

4 cable as well as other broadcasts in other industries.

5 Well, I mean, I could check back and give

6 some other names. Those are the ones that come to

7 mind right off the top of my head.

8 Q Thank you, Doctor Book.

9 What are the treatises or other

10 publications in the field of survey research that you

11 look to as being particularly respected and

12 authoritative?

13 A In the work that I do that goes towards

14 a somewhat more advanced, sophisticated level, which

15 primarily means statistical type of work and research,

16 the sources that I found most useful come out of the

17 University of Pennsylvania, the Wharton School at the

18 University of Pennsylvania. There's a professor and

19 a group of people at Wharton School. His name is Paul

20 Green, Professor Green, who is in some respects, at

21 least in my opinion, sort of the guru of these more

22 advanced market research techniques. And I've used

23 some of his articles and he also has a sort of a text,

24 I think just called Techniques of Market Research or

25 something like that, that I've referred to.

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1 Q Are there any other treatises or other

2 publications that you consider to be particularly

3 respected and authoritative in the field of survey

4 research?

5 A I'm sure there are. I couldn't name

6 anything off hand and I can't recall anything in

7 particular that I would have used in the very recent

8 past.

9 Q Okay. Have you published any books or

10 articles in the last 10 years on the subject of survey

11 research?

12 A I have written a large number of reports.

13 These are produced and provided for the client,

14 usually on a proprietary basis. Some of these studies

15 are then made public if the client decides they want

16 to do that. In that sense, they would have become in

17 the public domain. But most of what -- what I've done

18 in the past, well, 10 years that I've been involved

19 in market research work have been proprietary studies

20 where I write the report, do the analysis and write

21 the report, and then deliver that report to the client

22 company. And of course it's proprietary to that

23 company.

24 Q And is it fair to say that you're not at

25 liberty to discuss here before the Tribunal the

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1 techniques or results that you employed in those

2 proprietary surveys?

3 A Well, I can discuss the techniques. I

4 wouldn't be at liberty to actually provide the

5 results, the data or the conclusions that were drawn.

6 The techniques / could certainly talk about.

7 Q Well, focusing on those surveys that you

8 conducted that have eventually been made public.

9 Could you identify those surveys during the past 10

10 years that have been made public to the best of your

11 recollection?

12 MR. GARRETT: He's conducted several

13 hundred surveys during the past 10 years. Do you want

14 him to now list every one that the best of his

15 knowledge and belief sitting there has been made

16 public during the past 10 years?

17 MR. OLSON: Mr. Chairman, I believe that

18 Doctor Book indicated that most of his work had been

19 proprietary but that some modest number had been

20 published and I just wanted to find out about those

21 if he could recall here today.

22 CHAIRMAN AGUERO: Can you remember one of

23 the surveys, I believe one or two, which can be open

24 to the group?

25 THE WITNESS: Well, I can think of a small

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1 number, one, two or three, that may have become public

2 in the sense that the client company has then -- has

3 presented the results or the study to some public

4 forum like a convention or whatever. For example,

5 there is one that -- that I conducted for a group of

6 cable operators that had to do with subscriber

7 satisfaction, studies of how cable subscribers feel

8 about their cable company and the service that they

9 receive. We did a -- I've done a series of those

10 studies and the results of them, many of them, have

11 been put out in a sense to the industry.

12 . BY MR. OLSON:

13 Well, let's focus on that series of

14 studies in particular. Where have those surveys been

15 publicly disclosed?

16 A The one in particular that I'm thinking

17 of was used as the basis of a article that the

18 President or CEO of the cable company wrote and then

19 distributed. And he referred to the results of -- of

20 my studies, the data, the data that we obtained, 'in

21 that article. Now, there's -- there's always a

22 certain degree of retaining confidentiality. That is,

23 the results were made public but it was not specified

24 what the cable system was.

25 Q And who was the President or CEO who wrote

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1 that article?

2 A That was a Mr. Paul Freas, F-R-E-A-S.

3 Q What cable company is he with?

4 A The company is called TKR Cable in New

5 Jersey.

6 Q Any other surveys about subscriber

7 satisfaction that you conducted that have been made

8 public?

9 A I'm sure there have been but I'd have to

10 go back and go down my list to recall exactly which

11 ones would be appropriate to talk about and which ones

12 would not. I mean, they're -- we do' this on an

13 ongoing basis for a lot of different operators.

14 Little difficult to remember -- I mean, I happen to

15 remember that one because I talked to a gentleman not

16 too long ago when he was doing this article but others

17 would be -- be a little harder to remember.

18 Q I wonder if you could just take a moment

19 to reflect and see if there are any others that you

20 do recall having been made public.

21 A There was a study that I did for a cable

22 operator about three, maybe a little over three years

23 ago where, after we completed it, the person from that

24 company and I made a presentation of the study to a

25 industry conference. So, in that sense, that was made

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public. Again, the data were masked to some degree

2 so that it wouldn't relate to a particular cable

3 system or group of individuals but the techniques and

4 very general results were presented to the industry.

5 Q And what was that industry conference?

6 A That was also a C-TAM, C-T-A-M,

7 conference. They hold an annual research conference

8 in January each year and I believe that one was about

9 three years ago, possibly four.

10 Q Doctor Book, have you ever previously

11 testified in any court or administrative proceeding?

12 A Yes.

13 Q When was the most recent time that you did

14 that?

15 A Well, I'd have to check back the dates as

16 to which was the most recent. I think the most recent

17 one was where I gave deposition in San Diego on a

18 cable related case.

19 Q Was that an overbuild case?

20 A No, that was not overbuild.

21 Q What was the case about?

22 A Well, it was involving cable programming

23 and I testified in fairly broad, general way as a

24 programming expert in the cable industry for -- it was

25 a Case involving a company called Select TV Company

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1 named the mayor, Mayor Bradley and lots of other

2 people. And I'm an expert witness for the, I guess,

3 Defendants, the City of Los Angeles and cable

4 companies in that area.

Q Did you give a deposition in that case as

6 well?

7 A Yes, I did.

8 Q Have you testified at trial?

9 A That -- that case had not -- has not come

10 to trial as yet.

11 Q Okay. Any other cases in which you've

12 testified?

13 A There are a few others. I testified at

14 an Administrative Law hearing in New Jersey. This

15 goes back a ways, maybe four years ago, had to do with

16 a -- the cable franchising process in the City of, I

17 believe it was Elizabeth, New Jersey.

18 Q Any other cases?

19 A I testified in court -- there was no

20 deposition but there was just the testimony on direct

21 in court in Michigan, up in the Michigan peninsula.

22 I believe it was in Grand Rapids, Michigan, in a case

23 that involved a overbuild situation where one cable

24 company was coming in and building a cable system

25 where there already was one. And I believe there was

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1 Company that had gone out of business and some very

2 complicated suit. I never quite figured out who was

3 suing who but there were a whole bunch of parties on

4 one side and a whole bunch on the other and I was --

5 I was on the side that included Select TV.

6 CHAIRMAN AGUERO: Who finally won the suit?

7 THE WITNESS: I -- it's settled.

CHAIRMAN AGUERO: It was settled.

THE WITNESS: Shortly after the deposition

10 I was called by the lawyers and they said, it's

11 settled.

12 BY MR. OLSON:

13 Q Who were the lawyers in that you worked

14 with in that case?

15 A It was a large San Diego firm. I'd have

16 to look that up and get it for you.

17 Q I'd be grateful if you would.

18 Any prior occasions or other occasions on

19 which you've testified?

20 A Yes, I was the expert witness for the City

21 of Los Angeles and officially I guess I still am the

22 expert -- an expert witness for the City of Los

23 Angeles in the Preferred case: that's Preferred

24 Communications versus the City of Los Angeles and the

25 Cable Operators in Los Angeles, and I believe they've

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another fairly similar case where I also testified,

2 similar situation.

3 Q Is that the end of the road?

4 A There might have been another one or two

5 somewhere but, again, I could look it up and check.

6 Q In your practice, Doctor Book, ' if it's

7 important to you for a particular survey that the

8 people that you speak with have had a particular

9 experience, do you customarily have a screening

10 question that's designed to make sure that they've had

11 that experience?

12 •MR. GARRETT: Objection. It doesn't go

13 to this man's qualifications. He asked those

14 questions of the subs.

15 MR. OLSON: Mr. Garrett, you're absolutely

16 correct.

17 I have no further Voir Dire from me.

18 CHAIRMAN AGUERO: Thank you, Mr. Olson.

19 Devotional Claimants?

20 MR. GOTTFRIED: No questions.

21 CHAIRMAN AGUERO: Thank you.

22 Mr. Garrett, would you proceed.

23 BY MR. GARRETT:

24 • Doctor Book, you have been asked to

25 testify this morning on behalf of the Joint Sports

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1 Claimants. Would you briefly describe to the Tribunal

2 the purpose for which you've been asked to testify?

3 A Yes, I was asked to review the 1989 Bortz

4 Survey study, review it and comment on the Bortz study

5 in light of my own experience in conducting surveys

6 for the cable industry. And I was' also asked to

7 review some of the criticisms that had been made in

8 the -- for the 1983 Tribunal proceedings, criticisms

9 that were made of studies submitted at that time that

10 were similar to the 1989 Bortz study.

Q Doctor Book, the Joints Sports Claimants

12 have submitted to the Tribunal a report which is at

13 Tab H of the Direct case entitled Testimony of Samuel

14 H. Book, Ph.D., President, Malarkey-Taylor Research.

15 Do you have a copy of that testimony with you?

16 A Yes, I do.

17 Q Does that document accurately reflect the

18 opinions that you hold with respect to the issues

19 we've asked you to testify on?.

20 A Yes.

21 Q Doctor Book, were you involved in any way

22 of'the design or execution of the 1989 Bortz Constant

23 Sum Survey of Cable Operators?

24 A No, I was not.

25 Q Were you involved'in any way in the 1983

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1 Constant Sum Survey of Cable Operators presented by

2 the Joint Sports Claimant for the 1983 CRT

3 distribution proceeding?

4 A No.

5 Q Doctor Book, let me ask you to just

6 briefly at this point summarize the conclusions that

7 you have reached with respect to the two issues which

8 you've been asked to testify.

9 A Concerning the Bortz Study, I concluded

10 that it was competently developed and implemented.

11 It was a thoroughly professional market research study

12 and I concluded that the results of the Bortz Study

13 are reliable and a valid indicator of what cable

14 operators would spend on the distant signal

15 programming that they carried in 1989.

16 In terms of the second -- second part of

17 what I had reviewed and looked at, I concluded that

18 the criticisms that were made, primarily by Professor

19 Rubin in 1983, and I believe those criticisms, at

20 least some of them, were accepted by the Tribunal in

21 1983. I concluded that those criticisms would not be

22 a valid basis for discounting the 1989 survey results

23 of the Bortz Study.

24 Q Doctor Book, let me ask you to turn first

25 to your conclusions concerning the 1989 Bortz Study.

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1 You state on page 2 of your written testimony,

2 believe you stated a few moments ago that the survey

3 was competently designed and implemented. Do you see

4 that?

5 A Yes.

6 Q What factors .did you take into

7 consideration in reaching that conclusion?

8 A There were a number of -- of elements,

9 factors, within the Bortz Study that I looked at and

10 tried to assess. I can just quickly mention the main

11 ones here. First of all, the method of sampling is--

12 is always an important factor to take into

13 consideration. In the Bortz Study, the sampling

14 design and the stratification method that was used in

15 the sampling was done at -- at a high degree of

16 professionalism. It was done very well and they

17 followed all the steps that a well-designed market

18 research study should.follow. .

19 They also made use of the expertise of an

20 outside professional, academic professional who is an

21 expert on sampling and that person assisted in the

22 stratification of the sample and I think all of that

23 adds to the credibility of the study and certainly

24 added to my opinion that the study was competently

25 developed.

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1 Another element is the actual design of

2 the questionnaire, the survey data collection

3 instrument. The way in which the questions were

4 organized is important and I think in this case they

5 were organized in a logical way, the flow of the

6 questionnaire was done quite well. It would have been

7 easy to understand. It would have been brief enough

8 so that the respondent would not lose attention and

9 become bored with the survey but yet it was detailed

10 enough that it was providing their respondent.with the

11 kind of information they would need in order to answer

12 the 'questions. So it was a well designed, well

13 thought out survey instrument.

14 Another element had to do with the

15 telephone procedures, the way in which the surveys

16 were actually administered over the phone. Here the

17 Bortz organization employed an outside company, a

18 third party company, Burke Market Research I believe

19 it's called. The Burke organization is quite well

20 known in survey research business in cable industry

21 and in other areas.

22 So, the fact that Bortz' organization used

23 a third party company to actually conduct the surveys

24 adds a lot of credibility, especially in view of the

25 fact that the people conducting the interviews were

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not given any information beyond what they needed to know to actually administer the surveys. So, we could conclude that there would be no bias on the part of the interviewer. Interviewer bias is something that, in a survey, you always want to avoid and in this case I think they did avoid that by using the third party company and by, in a sense, doing a blind survey where the interviewers did not know who the client was or anything about the purpose of the survey.

Another factor that I looked at was the-- the key question itself, the constant sum question 'which was, I believe, question 4, 4a. That was certainly the -- the main question in the survey and I reviewed, went through quite carefully how that was structured, how it was presented to the respondent and I think that the design of that question was -- was quite appropriate. It was done with a lot of care and thought and I believe it was Acme in, again, a very professional way.

Some other factors, just very briefly, somewhat less -- more technical, perhaps less substantive than these others I've mentioned. The response rate is something that one always looks at in a survey that is the percentage of people that successfully completed the survey as a percentage of

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the total number of people that were originally approached. And in the Bortz survey I believe the response rate was somewhere in the 80 percent range which is high. That's a very good response rate for a survey of this type.

I think those -- those are the main factors. I looked at them. There might have been some other technical points but I think that pretty much covers it.

Q Doctor Book, on page 2, second paragraph from the top, you state that the constant sum method utilized in the Bartz Study is appropriate under the circumstances. Do you see that?

A Yes.

Q Where's your basis for that statement?

A My experience in conducting surveys has taught me that perhaps the most important thing that one has to do in conducting a survey is to use the type of question that is most appropriate for the particular objectives of the survey. In this case, the objective, probably the main objective of the survey, was to obtain trade off responses. I believe that the main point here is that the survey had to be designed to, in a sense, force the respondent to trade off, in this case categories of programming to show

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how he or she would have behaved relative to these different categories of programming. And the constant sum method, unlike various other methods, explicitly requires the respondent to make these trade offs.

So in the sense here that the objective of the survey was to obtain 'this trade off information, I believe that the constant sum technique is a very appropriate way of doing that.

Q Doctor Book, let me ask you to turn to the second part of your task here which related to the criticisms that the MPAA's consultant, Professor Rubin, had advanced in the 1983 proceeding. Would you briefly summarize for the Tribunal the nature of the particular criticisms that Professor Rubin advanced in that proceeding with respect to the constant sum survey submitted by Mr. Bortz in that proceeding?

COMMISSIONER DAUB: Doctor Book, before you answer that, may I ask you a question.

You work at Malarkey-Taylor resembles more of that of Bartz Company's or would you say Burke Marketing?

THE WITNESS: Well, probably a little of each but I would say it's -- the type of work that we do is a little closer to what Bortz does. The -- one of the differences is that we work within

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telecommunications pretty much -- well, 90 percent for the cable industry and I believe Bortz works for a wider range of industries. But in terms of the type of work, I think that what I do is -- is probably more similar to what the Bortz organization does than the Burke organization.

COMMISSIONER DAUB: So you do both research and analysis?

THE WITNESS: That's correct. Yes. And I employ outside companies that primarily do the telephone interviewing.

BY MR. GARRETT:

Q Doctor Book, would you summarize Professor Rubin's criticisms in the 1983 proceeding, at least those criticisms direct to the Sports constant sum survey?

A One of Professor Rubin's criticisms had to do with the time lag problem, the two year time lag between the 1983 surveys were conducted and the actual behavior in question of the cable operators. There was a, I believe, maximum of two year time lag there and this would effect the recall of the respondents.

A second criticism that Professor Rubin Made had to do with the constant sum technique itself, with the -- the nature of the constant sum survey and

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he felt that this was an unrealistic or inappropriate method that constant sum, I believe he said, would not be appropriate to achieve the objectives of the survey.

And a third criticism that Professor Rubin offered that I looked at and considered had to do with the telephone interviewing itself, in particular that the time spent on the telephone with the respondents would have been, in Professor Rubin's criticism, would have been too short a time spent on the phone to be able to accomplish the ends of the survey.

Those were the three criticisms that I reviewed and considered here.

Q And what is the understanding of the Tribunal's reaction to each of those criticisms, Doctor Book? That is, in the 1983 proceeding.

A From my reading of some of the material from the '83 proceedings, I believe the Tribunal accepted those criticisms.

Q All right. Let me ask you to turn first to the recall criticism that you just described. How, if at all does that recall criticism relate to the 1989 Bortz and Company survey?

A Well, in my opinion, that objection would not apply in 1989 at all. There really was no recall,

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either of those two forms of questions.

A In the 1989 survey, in those questionnaires that were administered in 1989 as it appears here on page 35, the respondents, cable operators, were asked to assume they had a fixed dollar amount to spend on the non-network programming that they carry on the distant signals that they carry. And they were then asked to allocate a percentage, if any, of the fixed dollar amount you would spend on each type of programming.

The lead in to the question says that we'd like you to estimate the relative value to your cable system of each type of programming carried on the stations I mentioned. In other words, the question is basically, as I would read it here, saying to a cable operator right now, and this would be, say, in December of 1989, right now how would you allocate your programming budget across the types of programming that you carry -- that are on the distant signals that you carry, non-network programming on the distant signals that you carry now.

So, in that case there's -- it's not really a recall issue at all. The question is asked what would you do now based on what do you carry now. In the other survey questionnaire which was the one

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at least I believe no significant recall problem in 1989 since the surveys were conducted in the end of 1989 and the first two to three months of 1990.

So, in the 1989 Bortz Study, the cable operators were being asked about something that was immediately prior to when they were being questioned, or even virtually simultaneous with when they were being questioned. So, I think one could debate whether that criticism was valid in 1983 but I think that it's, at least I would feel pretty clear that that lag time criticism would not apply to the 1989 study at all.

Please direct your attention to the particular survey instrument, the one that was used for 1989 respondents and those that were used for 1990 respondents. Do you have that before you?

A Yes, I do.

Q Doctor Book, on page 35 of the Bortz report, Sports Exhibit 1, do you have that in front of you?

A Yes.

Q Just to contrast that question with the question as it appears on page 39 of the Bortz report relating to 1990 respondents, and explain your views on whether or not the recall criticism applies to

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that was administered to cable operators in January and February of 1990 about asking about what they would have done in 1989, the lead in to the question as it appears here on page 39, the -- says, think -- again, thinking back to 1989, assume you had a fixed dollar amount to spend, and then it goes on, please think of what percentage you would spend for each type of programming and go through the same sort of a question.

So here, for those that were -- where the survey was administered to them in 1990, whereas it's the same survey, actually the same question, the respondent was asked to think back to 1989 which would have been one or two months ago and now what would you have done in 1989.

One could argue that there is that sort of recall problem of a two month, maximum two month time period here. My opinion would be that that is really not a significant issue. Again, these are cable operators. We're not talking about consumers or sort of man in the street interviewers. These are professional cable operators and ask them to think two months or one month prior, I think is quite reasonable and I really don't think there'd a significant recall problem there.

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Q Doctor Book, let me direct you attention to page 3 of your testimony under the heading, Constant Sum Techniques, do you have that before you?

A Yes.

• You are dealing there, are you not, with the second criticism that Professor Rubin had of the 1983 Bortz survey, correct?

A Yes, that's correct.

Q Would you just give us your views on that particular criticism?

A Yes. I think that the criticism that Professor Rubin in making here that this constant sum method is in some way abnormal or unrealistic for, as he puts it, operators and subscribers to do. That may be true for cable subscribers. I don't think that it's at all unrealistic or abnormal for cable operators. These are experienced professionals, business men. Their daily activity pretty much all day, every day during the working week involves cable television and programming, and all of the aspects of running a cable system. And it seems to me that it is not at all abnormal to ask cable operators to do this constant sum exercise.

Beyond that, the way that the question was phrased, this question that we were just talking

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about, question 4 on the Bartz survey, the way that question was phrased in terms of allocating your programming budget over these categories, my belief is that that would be something that cable operators would be quite familiar with. That is something that they do. They work with budgets; they allocate budgets; they're used-to having a fixed dollar amount and then allocating that to all kinds of elements and features of their cable system. So, my -- my view of this criticism is that I really think that Professor Rubin was thinking in his mind more about consumers, cable subscribers or whatever. In which case, I think what he had to say here has -- has validity.

But if we're thinking about experienced professionals in the field, in this case cable operators, I don't feel that the task that they were being asked to do was at all unrealistic or abnormal. In fact, I think it was quite a realistic exercise that they were being asked to perform.

Q Doctor Book, you understand, do you not, that cable operators do not have a program budget for distant signal program categories?

A Yes.

Q That they purchase full signals, not individual categories of programming on distant

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signals. Understand that?

A Yes.

Q And how does that effect your conclusion here?

A Well, I think that the objective of this survey was to simulate what the market place behavior would be if the current rules and regulations governing the cable industry did not apply. As we know now, a cable operator either carries or does not carry distant signal, one or more, however many they decide. The purpose of this study was to ask the cable operator to sort of step back from that position and state what he or she would do if, in fact, they were going to allocate the programming budget across categories of programming rather than carry or not carry a whole signal.

So, I think that what we have here is a simulated behavior task or exercise that the operators were doing and I don't think that it -- my -- my opinions about it, my -- the responses that I've been giving are really not effected by the fact that in reality the cable operator carries a complete signal or does not carry that signal.

Q Is this an abnormal use of the constant sum technique?

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A I don't think it's abnormal at all. For one thing, cable operators do go through at least implicitly and in some cases explicitly, they go through exercises that are similar to what they're being asked to do here in the constant sum survey. Those exercises are usually done involving the issue of whether to add new programming or delete old programming and their -- they go through the process of evaluating different kinds of programming, different services, programming services, and compare and trade off one against the other, decide what to add, what to drop or to do nothing. So that in other areas of the cable operator's responsibilities, they would be performing perhaps implicitly, rather than actually sitting down with pencil and paper, but they would be performing tasks that are similar to the constant sum exercise that they're asked to do here.

Q Doctor Book, let me ask you to turn to the third criticism that you had identified as emanating from Professor Rubin. You deal with those on page 4 of your written testimony, do you have that before you?

A Yes.

Q Could you again just briefly describe the nature of that, that criticism and your views on it?

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A Well, Professor Rubin stated back in 1983

2 that the fact that these surveys were conducted over

3 the telephone and, as he put it, in a very few minutes

4 in the interview, that it could not accomplish the

5 goals of the survey because of a short -- the short

6 time of the survey.

7 I really don't believe that that is a

8 valid criticism at all. My company and many other

9 companies conduct surveys, market research surveys,

10 various types of surveys on the telephone all the time

11 and among all different kinds of respondents, all

12 kinds of people. And we find that within a certain

13 time boundary somewhere between 10 minutes, even

14 sometimes 8 to 10 minutes, and maximum of maybe 20, ' a

15 little over 20 minutes.

16 People can answer questions, they can

17 understand what's being asked; they can deal with an

18 interview very effectively without any great problems

19 and the amount of time that's spent is not related to

20 the reliability of the results or the -- how

21 meaningful the survey is. In other words, it can be

22 a 6, 7 minute survey and if the question is well

23 designed and it's to the point, and you -- you

24 organize the interview properly, the information can

25 be extremely valuable and reliable even if it's only

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5, 6 minutes on the phone.

2 Similarly, in other cases you can do a 20

3 minute interview and, again, depending on how it's

4 designed and organized people will respond and will

5 thing about what they're being asked, and will go

6 through the process quite well. That's in general.

7 That's for surveys of all kinds and among all kinds

8 of people.

9 I would just note, again, in this

10 particular case, to make the point that these were

11 professionals. These were cable operators, business

12 men, business executives in the cable industry. My

13 opinion is they would have no difficulty at all in

14 however much time these surveys required, say in the

15 neighborhood of 10 minutes, to complete the task and

16 to provide the information that was desired here.

17 CHAIRMAN AGUERO: You know in the page

18 1795 in our determination of 1983 that what we're to

19 believe that this type of exercise conducted in a few

20 minutes over the telephone would not accomplish the

21 goals of the survey. And do you have any idea, Doctor

22 Book, how many minutes does the Bortz survey use in

23 1983 in compared with the amounts of minutes, the

24 length of the question, in 1989? Do we have anything

25 in the record? We don't have it.

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THE WITNESS: We may have it. I don't

2 have the exact numbers.

3 CHAIRMAN AGUERO: Do you know exactly how

4 many minutes Borte used average in 1989? The

5 estimation here in between 15 and 20 minutes and I

6 think -- I don't recall too well about the Bortz

7 survey the average in, 1989 was around 10 minutes per

8 question per cable operators? If I am wrong, correct

9 me, sir. I want to remember.

10 MR. LANE: Mr. Chairman, I recall he said

11 5 to 10 minutes.

12 CHAIRMAN AGUERO: 5 to 10 minutes, no?

13 MR. LANE: Yes.

14 CHAIRMAN AGUERO: Do you think that

15 between 5 and 10 minutes the cable operator can

16 testify, can recall exactly the questions?

17 THE WITNESS: I think in this survey, the

18 Bortz survey.

19 CHAIRMAN AGUERO: The 1989?

20 THE WITNESS: The 1989 survey, yes. My

21 guess would be, if I were to read through the survey

22 without knowing anything else, my guess would be that

23 that would be somewhere between a 6 to 10, 11 minute

24 survey. That would be about the amount of time that

25 I would estimate --

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CHAIRMAN AGUERO: Which questions were

2 more difficult to answer, the questions in 1983 or the

3 questions in 1989 for the cable operator?

4 THE WITNESS: In terms of that main

5 question, the constant sum question, I would say that

6 the 1989 survey where they talk about your programming

7 budget and allocating that would probably be a more

8 --I don't know if it would be easier but it would be

9 more straight forward or less, if there's any

10 possibility of confusion, there'd be less confusion.

11 It would be not a confusing question at all in 1989.

12 So that -- to answer your questions, I think that the

13 1989 question would probably be --

14 CHAIRMAN AGUERO: Easier?

15 THE WITNESS: Easier or at least more

16 straight forward for cable operators to answer than

17 the 1983 question. But I mean, I don't think we're

18 talking about a big difference here. I don't think

19 the 1983 question was all that difficult either. I

20 think the '89 improved upon it somewhat through that

21 use of the -- of the programming budget idea.

22 CHAIRMAN AGUERO: Thank you, sir.

23 Mr. Garrett, continue.

24 MR. GARRETT: Mr. Chairman, for the

25 record, I believe that Mr. Lane's recollection of Mr.

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1 Sorts' testimony is accurate. I too recall that he

2 testified that he thought an average was a 5 to 10

3 minute survey. I know there's a reference in the

4 CRT's 1983 Final Determination of 15 or 20 minutes.

5 I'm not certain what the source of that is but the

6 two questionnaires are basically the same length. So

7 there's only very small wording differences in the

8 two.

9 I have no further questions.

10 Thank you, Doctor Book.

11 CHAIRMAN AGUERO: Commissioner?

12 THE WITNESS: Thank you.

13 CHAIRMAN AGUERO: Commissioner?

14 COMMISSIONER ARGENTSINGER: No, thank you.

15 Should we take a break?

16 CHAIRMAN AGUERO: Let's take a five minute

17 break.

18 (Whereupon, at 11:16 a.m. a recess until

19 11:30 a.m.)

20 CHAIRMAN AGUERO: Let's go back to the

21 record. Mr. Dennis Lane from MPAA.

22 MR. LANE: You ought to give Mr. Scheiner

23 a chance once in a while.

24 CHAIRMAN AGUERO: He'll be DH, don't

25 worry. He get to -- he will hit at the ball, don't

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1 worry. The best DH ever, before the CRT.

2 MR. SCHEINER: I'm sorry, sir, what did

3 you say?

4 CROSS EXAMINATION

5 BY MR. LANE:

6 Q Doctor Book, would you turn to page 1 of

7 your testimony, please?

8 A Yes.

9 Q How many of the 100 surveys that you

10 mentioned were constant sum surveys?

11 A Oh, I couldn't say for sure but I would

12 say we used the constant sum question within somewhere

13 between maybe 5 and 10 of those surveys.

14 Q In how many of those between 5 and 10

15 involved constant sum where the respondent was making

16 a trade off among programming choices?

17 A Most of them certainly were as best I can

18 recall. I can think of one that was not programming

19 trade offs. Most of the others were programming.

20 Q Is a constant sum survey anything more

21 than asking your question with a scale between 1 and

22 10 or 1 and 100?

23 A What do you mean by anything more?"

24 Q Exactly that.

25 A I'm not sure I understand.

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1 Q Does anything distinguish a constant sum

2 survey other than the fact that it includes a question

3 that has a scale with a value between 1 and 10, 1 and

4 50, 1 and 100, 1 and some number, or zero and some

5 number?

6 A I'm still not sure I understand but let

7 me answer the way I think the question is.

8 The purpose of the constant sum and the

9 use of that technique is for these trade off

10 situations, as I stated previously. If you're saying

11 is there any difference between the constant sum and

12 , a survey where a person is asked questions about a

13 particular programming or whatever and how would you

14 rank or rate, or whatever, that programming by itself,

15 there is a big difference between the constant sum

16 where the respondent is asked to compare all of the

17 categories at the same time and allocate something

18 over those categories. I mean, that's the constant

19 SUM.

20 And then, there's lots of other kinds of

21 surveys but the most common is where you're asked

22 about one specific Like movies. And then you're just

23 asked a specific question about movies and maybe a 10

24 point scale, or 100 point scale, or whatever, to give

25 your answer about the one particular category.

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1 Could a ranking survey involve the same

2 type of choice between programming like you rate

3 movies 1, syndicated series 2, sports 3?

4 A Ranking surveys are done, certainly, quite

5 often. I mean, I've done them and I'm sure other

6 people have. The ranking method is -- is providing

7 less information that the true constant sum where you

8 allocate a fixed amount. The difference is that if

9 you're asked -- if you ask a respondent to rank five

10 categories or whatever it may be, all that you're

11 learning is which one gets the first position, which

12 one Second, third, fourth, fifth, et cetera. You do

13 not learn from that anything about the relative

14 differences between those categories. That is, one

15 respondent might -- let me give you a different

16 example.

17 You have two different respondents, they

18 might give a number 1 to category A and a number 2 to

19 category B but in truth, one of them might really have

20 a great preference or behavioral tendency towards 1

21 and really doesn't like 2 at all but he was told to

22 give it something so he put it second. Whereas, the

23 other respondent might be almost indifferent between

24 1 and 2 but he gives the 1 a 1. In other words, you

25 can't get at the differences between categories in the

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respondent's mind when you use the ranking method and that's really why the constant sum method was developed, I believe, to over come that problem.

Q Other than the difference between the ranking scale of 1, 2, 3, 4, 5 and the constant sum scale, would there be any difference, any other distinguishing factor of a constant sum survey from a ranking survey or any other type of a survey?

'MR. GARRETT: I'm sorry. I failed to follow the question. You're asking him to distinguish the constant sum scale from all other types of surveys?

MR. LANE: I'm asking him if anything other than the constant sum scale distinguishes a constant sum survey from any other type of survey?

THE WITNESS: As I stated, the distinguishing feature of the constant sum survey is the idea of forcing explicit trade offs by the respondent. There are other surveys, other techniques, survey techniques, that also require explicit trade offs and require the respondent to make explicit trade offs. Constant sum is one of those survey types.

The difference between -- if you're asking the difference between the constant sum method and the

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asked in the form of individual questions about the individual categories which is fairly common way of doing surveys where you don't have all of the categories looked at at the same but you just talk first about movies, about sports, et cetera and you ask questions about each one individually. Again, I think that would be a very inferior way of doing it though it certainly could be done.

Going to the other extreme in a sense in terms of much more sophisticated -- or, I shouldn't say sophisticated, let's say complicated methods, there are some survey techniques that are a lot more complicated, involve cards and different things that sort of require the respondent to go through a very complex series of exercises and questions. That might have been used for the same purpose as here, and again, I would say that would not be appropriate because I think the constant sum does the job quite well.

Q When you were answering this question, were you only thinking of the constant sum part of the survey and not the other aspects of the Bortz survey?

A Well, in this -- in this paragraph that we've referred to, I was talking here about the constant sum method.

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ranking method again, the difference is that the constant sum requires the respondent to indicate the strength of differences among the different categories.

BY MR. LANE:

Q Would you turn to page 2 of your testimony, please?

A Yes.

Q In the second paragraph you state that you do not believe there would have been any better way of determining how cable operators would have allocated their programming budgets. Do you see that?

A Yes.

Q What are other ways that they could have allocated their programming budget?

A I said there, "any better ways of determining how" --

Q What are other ways of determining cable operators would have allocated their programming budget?

A Well, certainly one way is what you had suggested just a minute ago. It could have been a ranking type question, 1, 2, 3, 4, 5, or 7, or whatever and I think that would be an inferior method of doing the same thing. It also could have been

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Q Only?
A Within this paragraph, yes. I mean, my, comments and opinions about the Bortz survey as a whole address the other parts of that survey, the other questions and all of that. This specific sentence that you've referred to deals with the constant sum question.

6 Only?

A I believe only. Let me just read it one more time.

A Where I say that I do not believe there would have *been* any better way of determining how operators would have allocated their programming budgets, I think that my frame of reference in making that statement would have included some of the other questions that the Board survey used that had to do with advertising allocation and there were a few other supplementary questions that were used in the survey that I thought added some useful additional information.

Q Is it your -- I'm sorry.

A I'm sorry. Information that would be in addition to the constant sum question.

Q And it's your judgement there would have been no better way to do that research then was done

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A Yes.

Q Do you recall what the response rate in the 1983 Board survey?

A No, I do not.

Q What type of response rates do you get when you do surveys of cable operators of this size, say, roughly 250 operators?

A We use a rule of thumb of 50 percent as being acceptable. If you obtain a 50 percent response rate, the survey would be considered acceptable and the results valid and reliable. Anything above 50 percent is all to the better and certainly we'd like to get -- we hope we get 60, 70, 80 percent response. But, 50 percent is kind of the rule of thumb cut off.

If we end up doing a survey and after the fact it turns out that we've done -- we've obtained a response rate that's below 50 percent, we would want to either go back and do some additional interviewing or discuss with the client what further steps should be taken.

Q Now, you understand do you not that the Board survey was a stratified sampling -- involved stratified sampling?

A Yes.

Q Do the response -- when you consider

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Q Well, my --

A What is --

Q There are 50 possible people that I can contact.

A Okay.

In the total universe. And I have two strata. One has 40 people in it. The other has ten people in it, okay? And I want to contact all 50. That's my total universe. And I tell you I have an 80 percent response rate for the whole survey. Does that tell you that the response rate was outstanding and I have a high degree of confidence in the projectibility of the survey data?

A I guess I'm not clear on -- on what you mean by response rate. In my definition from your--

It means that 40 people answered out of the 50. Does that make it easier?

A And where were the other ten people?

Didn't answer. There was an 80 percent overall response rate.

A All right. And what do the two strata have to do with it?

Q I stratified the sample and I just want to know if I look at the overall response rate, what does that tell me about projectibility?

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If I told you from those facts that I had an 80 percent response rate, would you say that it was an outstanding situation of response rate?

A Well, I'm not -- I'm not sure that we're using the term response rate in the same way or at least I'm not sure I understand how you're using it.

There are two strata. There are 40 possible people who can be in the first stratum and ten possible people can be in the second stratum. I have a response rate of 80 percent.

A I would interpret that -- and again, this is strictly hypothetical.

Q Right.

A I would interpret that to mean that you contacted a total of 50 people. You tried to contact, if you originally had as your total an attempted sample -- whatever 50 is 80 percent of what -- about 60?

Q I only tried to contact 50 people in my example.

A Then it's 100 percent response rate.

Q No, no. I said there was an 80 percent response rate.

A We're not using the term the same way, I don't think.

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A I'm still not sure I completely understand, but let me -- let me try to respond. If you're saying that you tried -- you had 50 people you tried to contact and you actually got 40 of them to fill out the survey.

Q Right. Right.

A The response rate is 80 percent.

Right. Those are all the hypotheticals,

A Right. So, there were 50 in total. You got 40 to do it properly. That's the 80 percent response rate.

Q Correct.

A And now you're saying that those 40 --

Q I'm saying what does that tell you about the projectibility of the study?

A Well, only knowing what you've told me on this -- in this example, then there's -- I would have to work out the confidence interval for the 40 responses and see what degree of confidence we were having.

Q What if I told you I just want to add one thing to the hypothetical. The 40 people in the first stratum all answered and none of the ten people in the second stratum answered. What would be your views about the projectibility of the results -- the overall

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results in that situation?

2 A I would certainly want to figure out what was happening here. It would be such an unusual situation. You know, I'd want to look at it certainly. The 40 that were in the one strata, you

6 tried to get 40 and you got them all and they all

7 answered. So, you know, it would be a reasonable --certain confidence in that based on whatever the statistical confidence interval is.

10 The other strata -- and I'm not sure what the strata are. I mean, it can be anything from east coast west coast or -- you know, whatever it may be. But, for some reason or other you're saying that there were ten people in the other strata and none of them would answer the questions.

16 Q Right.

18 A Well, I mean, I wouldn't have too much confidence in --

19 Q The overall study?

20 A No.

21 Q I'm talking about what' confidence would you have in the overall study in that situation.

22 A I would have the confidence determined by the overall confidence level, which I would calculate the confidence level based on the 40 completed

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50,000, be my quest.

2 A Okay. And then could you just --

Q Okay. Let's assume -- would 4,000 and 1,000 work for the nation?

A Fine.

6 Q Fine. 4,000 answered. They were in the first strata. They were west coast people. 1,000 did not answer. They were all in the second stratum. They were east coast people.

10 I have an 80 percent response rate under those circumstances, correct? And I want you to tell me What would be my confidence in projecting the results to the nation from that hypothetical -- purely hypothetical situation?

15 A And just one further piece of information. The same questions -- the exact same survey was asked--

17 Q Exact same questionnaire was asked for everyone. Exactly.

20 A If I had some reason to believe that there was no systematic difference between the east coast and the west coast and that the reason why these 1,000 people on the east coast did not answer was purely some random whatever sort of a fluke in the way the survey was administered. But, that east coast people

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1 and west coast people, we could show were similar in--

2 in whatever the relevant respects are. Then, I Would

3 -- I would have the same degree of confidence in the survey as -- as any other 80 percent response rate survey would give.

6 If I had some reason to believe there was something else that I didn't know -- that there was some systematic difference on the east coast and there was something unusual going on here, then I would have to restrict the -- the projectibility, the degree of confidence that I'd have in the results.

11 Q How would you go about determining whether there was a difference between the east coast and the west coast respondents?

15 A Well, I'd have to know who they were. I mean, are we talking now are these randomly selected households? Are they business executives in a certain industry? Are they, you know, males under the age of 16? I'd have to know who were being sampled and then just try to find out as much information about them as I could.

22 Would it be fair to say you would have to look at various characteristics of the two types of respondents to see if they matched?

25 A That -- I would think that's fair to say,

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yes.

2 Now, did you look at the response rate for the different strata in the Board survey?

3 A No.

Q All right. Did you do any analysis to see if the characteristics of those who didn't respond were similar to those who did respond?

A No, I did not.

9 Would you turn to page three of your testimony please?

10 A Yes.

12 Q You indicated that you deal with a lot of MSO's. You said you did primarily two types of studies, as I understood it. I know one was Programming, but I don't recall what the other one was.

16 A I believe / said we do studies for MSG's, which are the operators, and then also for Programming Companies.

19 Q I see. But, it's not two different types of studies?

22 A Not necessarily. I mean, the methods cross over both of those.

24 Q When you examine programming choices, is this primarily at the Mso level when you research

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programming choices?
2 A No. It's -- I would say it's both.
3 Q What do you mean by both?
A We do programming surveys for MSC's and
we also do programming surveys for Programmers.
6 Q When you -- if you just refer to the
7 bottom of page three please. You indicate that cable
8 operators are frequently called upon to assess the
9 value of alternate types of programming when deciding
10 to carry a new program service or a drop in an
11 existing service. Do you see that?
12 A Yes.
13 Q And these choices involve -- when you say
14 service, is it the same thing as a whole channel, say
15 for example, ESPN or CNN?
16 A Primarily, though it could be a partial
17 service. I mean, it could be a shared service. But,
18 generally it's a full --
19 Q But, if it's a shared service what would
20 be -- give me an example. In other words, you'd have
21 say -- I know this has probably never happened in the
22 history of the world -- ESPN and CNN sharing the same
23 channel on a cable system?
24 A Or -- right. Or more likely when CNBC was
25 first coming out, the news public -- not public, but
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the news and consumer channel of NBC -- it would
2 sometimes be shared with a channel that already had
3 some programming on it that was not full, 24 hour a
4 day programming.
Q And these services are pretty well known
6 in the industry as offering one particular type of
7 programming, aren't they? ESPN sports, CNN news, AMC
a movies.
9 A well, a lot of them are, but there also
10 are quite a few of the basic cable services that are
11 what might be called broad-based family entertainment
12 channels, like the Family Channel, USA Network, that
13 carry a pretty wide range of programming.
14 Have you ever done a survey of, say, the
15 Family Channel programming or any of USA to determine
16 the relative values of the different types of
17 programming within that channel?
18 A I don't believe I've done anything exactly
19 like that. I've done some work that was along those
20 lines, not quite what you've described.
21 Q Have you done any work that compared
22 programming service -- and I'll just use ESPN and CNN
23 as examples -- where you compared ESPN versus CNN, a
24 whole service against another whole service?
25 A Yes, I've done surveys of that type, you
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were saying?
2 Yes.
3 A Yes, I have.
• And would that be the more common survey
5 to compare services? In other words, is the choice
6 that you're just talking about here is, again, say
7 taking ESPN and dropping CNN to make a simple example?
8 In this sentence is that what you were thinking of?
9 A That was part of it, but probably not the
10 -- the main emphasis of what I had in mind there. I
11 was really thinking more about new programming where
12 it would be some service that doesn't exist at all.
13 I mean, it exists, but it's not carried
14 on cable channels as yet.
15 Q So, it would be like the new NBC service
16 compared to same other financial news service?
17 A Possibly.
18 Q It would be something of that order, is
19 that what you were thinking about?
20 A That -- that would be -- yes, that would
21 certainly be part of it. I've also done some surveys
22 where we have asked specifically about types of
23 programming, not -- not the channel -- not CNN, but
24 a particular type of programming like Movies and
25 Sports or whatever.
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Q And do you ask in that survey or those
2 surveys did you ask about trade-offs between different
3 program types?
4 A Yes.
Q were those the ones that used a constant,
sum?
7 A Some of them were, yes. We used the
a constant sum for that type of survey.
9 Now, in the sentence above it -- above the
10 one we've just been discussing -- you say that "cable
11 operators engage in exercises similar to constant sum
12 allocation when evaluating those signals." Do you see
13 that?
14 A Yes.
15 Q Can you tell me what those exercises to
16 which you were referring are?
17 A What I meant here was that the cable
18 operators are quite used to looking at the categories
19 of programming that are carried on distant signals or
20 superstations or whatever -- some of the basic
21 channels as well.
22 And at least implicitly they would go
23 through the process of comparing and evaluating Sports
24 versus Movies versus News, different types of
25 programming when they are in the process of making a
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decision as to whether to drop one or more particular
channels and add same other channels.

Q And when they're making the decision to
drop a channel or add a channel, what are some of the
factors that you include in your questionnaire that
you think are important to the operators in making
that type of a decision?

A I would try to get at the value of those
channels and of the programming within those channels.
The value of that programming to the cable subscribers
in terms of both retaining existing subscribers and
acquiring -- adding new subscribers.

Q Do you ever ask questions about what the
price of the services are and how different prices
would effect that decision?

A I don't recall doing that. It's possible.
By price here what are you referring to?

Q Say it's a cents per subscriber service
and one is double the price of the other one.'

A / don't recall ever asking that -- that
directly in a survey. I think the assumption is that
the cable operators know what they're paying and they
-- they would have that in mind.

Q I'd like to turn to page four of your
testimony, please. What in your mind was the

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types, is it not, in each of the questions in the
survey?

A Right.

Q And when the respondent heard the words
"live professional and college sports" how did the
respondent, in your judgement, define that term?

A I believe the cable operator would have
thought about the professional and college sports that
are on the distant signals that he carried in '89.
I mean, it would be baseball, professional baseball,
NBA basketball, whatever college games are being
carried.

Q What about, say, auto racing is that was
carried on a distant signal?

A Live?

Q Yes, live.

A I'm not a fan of auto racing, so I'm not--
not certain how that would fit in. I would imagine
that cable operators would -- would-have that somewhat
in mind as well as they hear that definition.

Q What about, say, live professional
wrestling?

A Live professional wrestling?

Q Yes.

A Are you -- are you asking me to assume

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objective of the Bortz survey?

A I believe it was to obtain a measure of
how cable operators would allocate programming budgets
on the different categories of distant signal
programming that they carried in 1989.

Q And are you aware that the Joint Sports
claimants are asking the Tribunal to make awards based
on that survey?

A Yes.

Q Do you know the extent to which the
categories used in that survey are comparable to the
categories that the Tribunal uses to make allocations?

A I don't know the exact specifications of
the categories that the Tribunal uses. So, I -- I
don't know for certainty if -- to what degree the
categories in the survey match up with the categories
that the Tribunal uses.

Q When the respondent was asking -- I'm
sorry -- was answering the question -- the four
question in particular -- what definition in your
judgment have in mind of the various program
categories?

A Could you repeat that? You're referring
to question 4A in the survey?

• O Sure. It's the same List of program

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there is -- which I'm not aware that there is live
professional wrestling?

Q Yes, assume that there is live
professional wrestling.

A On -- on distant signals?

Q On distant signals.

A I think one -- one could make the
reasonable assumption that cable operators would --
would at least somewhat have that in mind as they hear
that description.

Q And by "that description" you mean live
professional sports?

A Right.

Q Do you think that any of the cable
operators had in mind the Tribunal's program
definitions that are used in this proceeding?

A Well, as I said, I really don't have those
definitions and I'd have to see the exact wording.

Q Well, were you provided a copy of the
Tribunal's definition to the programming categories?

A Not that I know of. I was provided with
the 1983 findings of the proceedings here which are
dated 1986. And I don't think unless they're
somewhere in here, I wouldn't have that.

Q To the extent the survey were being used

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to make allocations by the CRT would it be important
to have definitions that match the Tribunal's
definitions?
A I think that the definitions that are used
in the survey ought to be close to the -- the
Tribunal's definitions and more importantly, ought to
convey the appropriate meaning to the respondents for
the particular category.
So, for example -- and as I say I don't
know what they are. But, if a Tribunal definition is
maybe fairly technical or has some sort of complicated
wording in it, you would probably want to simplify it
and, you know, just say Movies.
I don't what the Tribunal definition of
Movies is, but just using the word Movies seems to
be a -- a good way to convey the sense of what we're
talking about here. Everybody knows what Movies are.
CHAIRMAN AGUERO: Gone with the Wind.
THE WITNESS: Right. So, you know, again
it's hard for me to respond to that without having the
definitions in front of me.
MR. LANE: Those are all the questions I
have, Mr. Chairman.
CHAIRMAN AGUERO: Thank you, Mr. Lane.
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at 1:30. Okay. 1:30. Let's do it until quarter to
2:00.
MR. LANE: Quarter to two. Thank you very
much.
(Whereupon, the hearing was adjourned to
reconvene this same day at 1:45 p.m.)
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(1:50 p.m.)
CHAIRMAN AGUERO: Mr. Olson, would you,
.please?
MR. OLSON: Thank you very much, Mr.
Chairman.
CROSS-EXAMINATION
BY MR. OLSON:
Q. Dr. Book, just for the record again, my
name is Tom Olson representing the Public Television
Claimants.
You mentioned in your earlier testimony
that you had done some surveys for MSO cable companies
relating to different types of programming. Is that
correct?
A. Yes.
Q. Over the past five years, can you give me
a ballpark figure for how many such surveys you've
done for MSOs?
A. Well, surveys that had some portion of
them devoted to programming issues, I would say,
somewhere thirty to forty different surveys.
Q. Over the past five years?
A. Yes.
Q. Why would an MSO commission that kind of
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MR. KOENIGSBERG: We have no questions of
this witness.
CHAIRMAN AGUERO: NAB?
MR. STEWART: I have no questions.
CHAIRMAN AGUERO: No questions. PBS?
MR. OLSON: Yes, sir.
CHAIRMAN AGUERO: Well, the Commission
wish to break. It's 12:30. For lunch. Do you want
to commence now or how long do you have to close this?
MR. OLSON: More then the 15 or ten
minutes we have between now and 12:30. So, I'd be
happy to break now if that would --
CHA/RMAN AGUERO: 15 minutes? Ten
minutes?
MR. OLSON: No, no. I would say probably
half an hour to 45 minutes total.
CHAIRMAN AGUERO: Then we -- let's break
right now and return -- what time do you want to
return? It's 20 past now. We have the appointment.
Do you remember? 12:30, 1:30 -- quarter to 2:00 is
fine with you people?
MR. OLSON: Well, we can't finish now
because we have about 45 minutes here and then --
MS. DAUB: How does it sound at 1:30?
CHAIRMAN AGUERO: All right. We'll do it
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(1:50 p.m.)
CHAIRMAN AGUERO: Mr. Olson, would you,
.please?
MR. OLSON: Thank you very much, Mr.
Chairman.
CROSS-EXAMINATION
BY MR. OLSON:
Q. Dr. Book, just for the record again, my
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research?

A. Generally, this is done by the marketing and/or programming department at the MSO. The ones that I've done have mostly been for the marketing department, and the purpose is to learn about how customers and noncustomers -- that is, people that do not subscribe to cable -- to learn the attitudes, preferences and, to some extent, behavior of people with regard to programming, and that information is then used as input into the marketing campaigns, marketing plans that the MSO develops.

It's also used as input into the different packaging strategies, program packaging strategies that MSOs create.

Q. I'm sorry. You say, that the MSOs at a central level create?

A. Well, the MSOs usually provide the framework and the sort of general direction in these marketing areas. Then the actual marketing is implemented by the individual systems or regionally, in some cases.

Q. Have any of your thirty to forty surveys over the past five years that we've been discussing been used by programming departments?

A. Yes. I'm quite certain they have. I

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A. Yes.

Q. From your perspective, you're interested in getting a large amount of carriage by cable systems. Right?

A. Yes.

Q. From the cable system's perspective, they're interested, among other things, in paying a low price. Right?

A. Well, that's one among many factors that would be considered.

Q. So there could be deals in which a cable MSO agrees to carry a particular channel to a certain number of subscribers nationwide in return for getting a break on the price. Right?

A. It might clarify if I can back up and try to answer that in the way I understand it. Generally, what happens is that a new programming service like the Sci Fi Channel has to undertake a two-stage selling process.

The owners of that channel service would go out first to the MSOs, the major, the top ten or top twenty or whatever, and do its deal with each of those MSOs, hopefully convince them to carry the channel and work out the terms of the deal.

One of those terms, of course, is the

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don't know if I'd be able to break down how many, because I'm not always privy to how the information is used or who uses it after we complete the work and deliver our report. You know, it can be used in various ways.

Q. Does it sometimes happen that an MSO will make a deal about purchase of a particular cable service and make that deal on a basis that would be applicable to all of their individual cable systems?

A. I couldn't say if that ever happens or has ever happened. If I understand the question, you're saying -- or if I might rephrase it, do MSOs typically make the decision to add a service or carry a service and then enforce that decision across all of their systems?

Q. The way you've said the question is fine, except I would say not typically, but does that sometimes happen?

A. It's certainly not usual, and it's not the normal way that MSOs operate. As I say, I really couldn't say if it's ever happened, but in my experience it would be fairly rare for that to occur.

Q. Well, suppose you were starting a new cable service, for example, the Science Fiction Channel. You're familiar with that?

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price that they're going to pay for it. That may or may not be the most important. In fact, it's not the most important. It's just one factor, but then there's a second stage.

That is, the same channel would have to go out to individual systems and actually convince however many individual systems that they can to carry that channel. So in other words, 'getting the head office or corporate office approval or okay on a particular channel is not the end of the story.

They still have to market themselves down at the system level to each individual system.

Q. What's the purpose of the first stage?

A. Well, that's basically to set the terms of the deal, which would then apply to all the systems that are owned by that MSO.

Q. Does the MSO, in the first stage, make any commitment about how many subscribers it will deliver to the new cable service?

A. It usually does, but that commitment is often expressed with certain qualifications, and it's also expressed over time. So it might be a commitment for a million subscribers or whatever, but it may take three years for the Sci Fi Channel to actually sign up cable systems with a million subscribers in that

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MSO.

Q. Any other qualifications?

A. Well, that's all part of the deal. In other words, that all would be negotiated. There might -- They might not make any guarantee at all. Might just say, you know, sign up as many of our systems as you can sign up or there might be various sort of contingent guarantees.

Q. You're aware that there are certain MSOs that own stakes in certain program services. Right?

A. Yes.

Q. For example, TCI has a substantial interest in Turner Broadcasting. Right?

A. Yes.

Q. Do you think that TCI central management is indifferent about whether its individual cable systems carry the various Turner channels?

MR. GARRETT: Mr. Chairman, may I inquire as to the relevance of this line of cross-examination to Dr. Book's direct examination? He was called upon to testify concerning the Bortz survey, criticisms that had been leveled about the Bortz survey, the 1983 proceeding; and I'm lost here.

MR. OLSON: Mr. Chairman, I prefer not to go into great detail about my purposes, but I would

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Very rarely do they do that.

Generally, the decision is -- With some influence from the MSO, the decision is left to the individual system or, as I said before, sometimes to a regional grouping of systems.

Q. But there can be varying degrees of pressure and influence applied on individual operators from the central MSO. Right?

A. I'm sure there could be. You know, I can only speak about what I'm familiar with.

Q. Mr. Lane discussed with you some surveys you had conducted in the past, and I want to explore that a little bit further. Let me see if we can make a distinction between two kinds of channels:

First of all, channels that offer essentially a single kind of programming such as ESPN which is a specialized Sports channel, and on the other hand, channels that offer a variety of different types of programming, such as the Family Channel or USA or most television broadcast stations. Is that a distinction you feel comfortable with?

A. Sure, that's fine.

Q. In the past five years, have you ever done a Constant Sum survey in which you asked cable operators to rate the values of particular types of

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say that it's certainly relevant to Dr. Book's testimony concerning his belief that the individuals who responded to this survey had engaged in the budgeting sort of processes that he asserts in his testimony they did engage in.

CHAIRMAN AGUERO: Mr. Garrett?

MR. GARRETT: I find it rather farfetched, but if the Tribunal wants to hear this line of cross-examination --

CHAIRMAN AGUERO: Would you like to answer the question for Mr. Olson?

THE WITNESS: Sure. Could you repeat that again?

MR. OLSON: Sure.

BY MR. OLSON:

Q. Do you believe that the central management of TCI in Denver is indifferent about whether the individual cable systems that TCI owns around the country carry the various channels offered by Turner Broadcasting?

A. I'm sure that they are not indifferent at TCI, but my sense of this is, and from what I know just from talking to cable operators, MSO and in the field -- My sense is that the MSOs only rarely insist on their cable systems carrying a particular service.

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programs that were carried by a single mined program type channel?

A. I can't recall one -- any one that I've done along those lines where we interviewed cable operators. There were some surveys that I've done that, I believe, fit the description that you've given where the respondents were cable subscribers or consumers broadly.

I could check back. I can't recall at this point one that was of operators that fit your other criteria there.

6. Do you recall what channel it was that you were asking cable subscribers about?

A. One that comes to mind, and there may be others -- We did some survey research work involving WGN.

Q. What kinds of questions did you ask about WGN?

A. This was a survey that was looking at the impact of the various types of programming carried on WGN on cable subscribers and nonsubscribers to cable.

Q. Are you at liberty to disclose the results of that survey?

A. I would have to ask the client.

Q. Why did you ask cable subscribers those

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questions about WGN?

2 A. Well, this was done on behalf of WGN, and

3 actually it's the company that retransmits WON, United

Video, and they were interested in establishing the

relative importance of the Sports programming, mainly

the Chicago Cubs which are baseball games that are

carried on WGN, relative to the other kinds of

8 programming that *GN* has, Movies and News and All Other

9 kinds of programming.

10 MR. GARRETT: Mr. Chairman, I might just

add that there have been press -- The trade press has

2 reported some of the results of that survey, and we

would be more than happy to provide it to the

14 Tribunal, if the Tribunal so wishes, since Mr. Olson

15 has raised it here on cross-examination.

16 CHAIRMAN AGUERO: Mr. Olson?

17 BY MR. OLSON:

18 Q. Dr. Book --

19 MR. OLSON: Did you want me to respond to

20 that?

21 CHAIRMAN AGUERO: Yes.

22 MR. OLSON: I would suggest that, if Joint

23 Sports would like to sponsor that survey in evidence,

24 that they go through the usual procedures to do so.

25 I'm not offering it in **evidence.**

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CHAIRMAN AGUERO: Mr. Garrett?

2 MR. GARRETT: Still, the Tribunal might

3 be interested in seeing it, since it has been stumbled

4 over and brought up. The portions that have been made

public, that I'm aware of being made public, I see no

6 reason not to make available to the Tribunal.

7 COMMISSIONER ARGETSINGER: I think you

8 asked the witness what the results were.

9 MR. GARRETT: If there is more, then we

10 could, with the consent of WGN/United Video release,

11 we would be happy to do that, too.

12 BY MR. OLSON:

13 Q. My question, Dr. Book, really goes to a

14 different issue, and that is why did you ask the

15 questions about WGN of cable subscribers as opposed

16 to cable operators?

17 A. Well, the short answer is that that was

18 what the client requested. The more substantive

19 answer is that they were interested in determining --

20 United Video was interested in determining to what

21 degree these different programming categories are

22 important to the satisfaction of existing cable

23 subscribers, and also how important these different

24 categories of programming are in terms of acquiring

25 new subscribers.

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So we asked the questions to existing

2 subscribers and nonsubscribers to cable.

3 Q. So is it fair to say that the Tribune

4 Company believed that it would be more helpful for

5 them to ask these questions of cable subscribers

6 rather than cable operators?

7 A. Well, no. First of all, it was not the

Tribune Company.

8 Q. Pardon me.

9 A. They're passive in this. It was -- United

10 Video is the -- provides WGN's cable systems. I'm

11 sorry. Then what was the other part?

12 Q. So was it your understanding that United

13 Video thought that it would be more valuable to ask

14 these questions about WGN of cable subscribers rather

15 than cable operators?.

16 A. The purpose that, I presume, they had in

17 mind -- as I say, I don't always know when I'm working

18 with a client exactly what they might want to do with

19 or use a particular survey, but in this case, best I

20 can remember it, the intent of United video would be

21 to use this information to help them increase the

22 coverage of WON. That is, increase the number of

23 cable systems that are carrying WGN.

24 So, presumably, what they intended to do

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would be to be able to then go with these results to

2 the cable operators that do not carry WGN and show

3 them how important or unimportant the different

programming categories were, and convince. them to

carry WON.

4 Q. Have you done in the past five years any

5 other Constant Sum surveys in which you asked the

6 respondents to evaluate different types of programming

7 in a single mixed program type channel?

8 A. I can't think of any offhand that would

9 quite fit that description that you've just provided.

10 Q. • Let me ask you a slightly different

11 question. Have you ever done in the past five years

12 a Constant Sum survey in which you asked the

13 respondents to evaluate different types of programs

14 carried on several different mixed program type

15 channels?

16 A. And you said a survey of cable operators?

17 Q. Either operators or subscribers.

18 A. In one form or other, and I can't be real

19 precise without sort of reviewing a lot of the back

20 prior studies, we have done surveys of subscribers

21 that asked them to evaluate different categories of

22 programming, regardless of where those categories are

23 actually carried on stations.

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Q. That is, for example, you would say how much do you care about Movies, Sports and News, leaving aside what channel it comes from?

A. We have certainly done that at some point, yes.

Q. Have you ever done a Constant Sum survey in the past five years in which you asked the respondents to evaluate different types of programming shown on a particular list of mixed program type channels?

A. I believe I have, but I don't -- Again, I would have to somehow go back and look through to refresh my memory of exactly what the survey was and how it was conducted and what the questions were.

I know that we often have a small group of questions within the survey that may be a survey about some other purpose altogether that deals with the kinds of questions that you're raising here.

Q. Let me make sure I understand. We're talking about a survey in which you have a list of channels such as, say, the Family Channel, USA Channel, and WTBS, for example.

A. Right.

Q. And you asked the respondents to place a value on a Constant Sum basis on particular types of

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called narrow cast channels -- that is, a single type of programming -- and others are the broad based channels that have different types of programming -- I believe that's what you had said.

Q. Let me correct your impression of the hypothetical. I'm talking about a survey in which you ask solely about broad based channels such as USA Network or the Family Channel or, for that matter, WTBS. Would you agree they are all broad based channels?

A. Yes.

Q. Hays you ever in the past five years done a Constant Sum survey in which you asked the respondents to rate the value of different types of programs across several specific mixed program type channels such as the Family Channel or USA?

A. I don't believe that I've done surveys where the channel names were specified. As I said before, we've asked respondents to evaluate and compare the types of programming, but as best I can recall, I don't remember one where we introduced names of different channels as part of the question.

Q. Let me turn, Dr. Book, to a topic again that Mr. Lane raised with you very briefly. If you would turn to page 35 of the Bortz report, please,

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programs carried by those three channels?

A. I don't recall ever doing anything like that. I mean, I would have, to think about it and see if that would make sense to do. It seems like it's a little bit mixing apples and oranges. So I don't know how a survey would be designed to do that, and I don't recall doing anything along -- quite the way you've described it.

CHAIRMAN AGUERO: What's the meaning of the question? Why do you ask this question to Mr. Bock?

MR. OLSON: Excuse me?

CHAIRMAN AGUERO: What is the meaning of the question?

MR. OLSON: Well, I wonder if I could postpone that until after we've finished this line of questioning. I wanted to get Dr. Book's views without unduly explaining my own, if Mr. Chairman would indulge me.

CHAIRMAN AGUERO: Okay.

BY MR. OLSON:

Q. How would it be mixing apples and oranges, Dr. Book?

A. Well, if you're saying there is a group of channels, some of which are what are sometimes

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what do you believe that the cable employees who answered this survey understood by the term Movies?

A. I think they understood it to be movies, films, anything that would have been a motion picture that, at least at some point in its life, had appeared in a theater, probably, though even that may not necessarily be the case. I just think any motion picture.

Q. Do you think that they understood any further qualification on the term Movies?

A. No. I think that the word has come into the common usage to such a degree now that cable operators would just think of movies, old ones, new ones, almost any kind.

Q. And what do you believe that the cable operators who answered the aorta survey understood by the term Syndicated Shows and Series?

A. Here, the term Syndicated, of course, has a technical meaning, a meaning that's specific to our business, to the broadcast and cable business. I think operators would understand that meaning.

They would know that these are programs, Shows and Series, that were in syndication.

Q. Can you explain for the record what syndication means in this business?

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A. These are programs that have been produced and aired on some, usually broadcast, network but produced and aired in one window or vehicle in the entertainment -- the broadcast entertainment business -- and then sold to as large number as possible of stations, other broadcast stations or cable channels or whomever, for the subsequent runnings of those. That's the usual case with syndication.

There is also first run syndication, which is a little different, but the normal usage of the word would be what in everyday language we would basically call reruns, shows that have appeared and are now syndicated or packaged into fifty-two weeks or whatever, and then sold to TV stations, as many as they can sell them to.

Q. Well, just so the record is clear, Dr. Book, let me make sure I understand. There are some syndicated programs that are in their first run. Right?

A. Yes.

Q. Such as, say, the Donahue Show or Giraldo or Wheel of Fortune. Am I right, Dr. Book, that what all the programs we're talking about have in common is that they are sold on an individual basis to individual stations around the country as opposed to

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thinking about when they heard that phrase?

A. Well, ' since we're talking here about programming carried on the distant signals that that operator carriers, I believe they would be thinking mostly about the local News, sometimes talk type shows, the local programming that that station had produced and carried.

So it might be local news. It might be sort of a discussion type show, anything that the station would have produced by themselves that had something to do with news and information and sort of public activities.

Q. Well, if a station had acquired the rights to programming that was distributed nationally but that was of a News or Public Affairs nature, a cable operator might think of that as well?

A. What would be an example of that?

Q. Well, let's suppose that WTBS had a documentary on or had a regularly scheduled documentary series that dealt with public affairs issues. Would that fall into the News and Public Affairs category?

A. Well, if it was syndicated and we're talking about other stations, not WTBS but others that would have bought it, then it would be in the

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being sold to one of the three broadcast networks?

A. I'm not sure I would want to accept your definition as completely comprehensive, but generally, that's the sense, that they are sold to stations separately around the country.

Q. Are there any further qualifications that you think cable operators understood when they heard the term Syndicated Shows and Series?

A. I don't think so. I would just add that the typical cable operator, especially a typical respondent that was obtained for these surveys, would be more knowledgeable about what Syndicated Shows and Series means, certainly, than I am.

For them, it's their business. They know exactly what the term means, and what I'm giving you is sort of my sense of what I think they would perceive.

What I think is pretty clear is that the cable operators that were being interviewed here would have a very clear and precise sense of what Syndicated Shows, and Series is, as, I say, they deal with that terminology all the time.

Q. Let's turn to the next program type, News and Public Affairs. In your own words, what kinds of programs do you think- that , cable operators were

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Syndicated area.

Q. Let's suppose that only WTBS carried it?

A. And they produced the program and just carried it on their own? Sounds like that would fall into the News and Public Affairs category.

Q. Let me just ask you; If there were other nationally produced News programs that were carried by a particular station, there's nothing in the wording of this question that says Local. Right?

A. No, there's nothing in the question that says Local. I think that cable operators would think of it as local only because it's already been explained to the respondent that we're talking about the programming that's carried on the distant signals that you carry, and those distant signals were mentioned, and it was all in his head or her head pretty clearly.

So again, you're asking about my perception of what someone else might think, and I can't put myself in that person's head; but I guess I can only say, if it were me and I were being interviewed as the respondent and the News and Public Affairs category was mentioned, knowing that we're talking about distant signals that I carry, I would just think that it's mostly locally produced News and

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1960

1 Public Affairs.

2 Q. But not exclusively local?

3 A. I think, though, the local would dominate

4 my thinking, you know. I don't know how much of

5 anything else might sort of pop into mind.

6 Q. With regard to the category of Sports

7 programming, you're aware that network stations, that

8 is, stations affiliated with the ABC, CBS and NBC

9 networks, are quite commonly carried as distant

10 signals. Correct?

11 A. Yes.

12 Q. When cable operators were asked to think

13 about live, professional and college sports on the

14 distant signals that they carried, is it possible they

15 might have thought about some of the programming

16 provided by the ABC, CBS or NBC networks?

17 MR. GARRETT: Are you asking that question

18 with respect to the particular categories listed here

19 or with respect to the entire question and the way the

20 question was defined?

21 MR. OLSON: I'm asking what they would

22 have thought of in the context of this question about

23 the phrase live, professional and college sports, and

24 specifically whether they might have understood that

25 to include some Sports programming offered by the ABC,

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1961

1 CBS or NBC television networks,

2 THE WITNESS: Well, on the top of page 35,

3 the question as its written here, the first sentence

4 is "I'd like you to estimate the relative value to

5 your cable system of each type of programming carried

6 on the stations I mentioned other than any national

7 network programming from ABC, CBS and NBC." Then

8 after some other explanation, it goes down to the

9 categories.

10 My assumption would have to be that the

11 respondent has assimilated that earlier piece of

12 information, and he or she knows that we're not

13 talking about the network programming that they might

14 carry as a distant signal.

15 BY MR. OLSON:

16 Q. Let's just assume hypothetically that a

17 particular respondent, for some reason or other,

18 didn't get that message and was including some very

19 popular network Sports programming in giving a value

20 to the live, professional and college sports category.

21 Would that be significant, in your opinion?

22 A. Well, I'm not sure what you mean by

23 significant, and also you're asking me to assume

24 something that I don't really think is the case.

25 Q. I'd just like you to make the assumption,

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1962

1 in your capacity as an expert.

2 A. So make the assumption that a respondent

3 has --

4 Q. That a respondent mistakenly was giving

5 credit in the answer about live, professional and

6 college sports to some network programming offered by

7 ABC, CBS or NBC. Would that be significant?

8 MR. GARRETT: The witness has expressed

9 confusion as to what you mean by significant or

10 significant for what purpose under this hypothetical.

11 MR. OLSON: Significant in terms of the

12 validity of the rating given to live, professional and

13 college sports in this survey.

14 THE WITNESS: Again, with the stipulation

15 that I don't really accept the assumption you're

16 asking me to make, but if I am to make it anyway,

17 there is other programming that these network distant

18 signals would be carrying besides live professional

19 sports, certainly Movies and Syndicated Shows and

20 whatever other kinds of programming.

21 Presumably, the person that didn't get the

22 message up front didn't get it for all of the

23 categories here, and whatever effect his lack of

24 knowledge or his misunderstanding might have had on

25 live professional and college sports, it would

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1963

1 probably have the same effect on the other categories.

2 So I don't think that, overall, -- At

3 least based on the information that you've given me

4 here, I don't think that, overall, that would make

5 much of a difference, at least on the major -- It

6 wouldn't make, best I can tell, any difference on the

7 major categories here.

8 BY MR. OLSON:

9 Q. Dr. Book, I'm smiling, because you've done

10 what in law school professors used to call changing

11 the hypothetical. Let me see if I can state it again.

12 CHAIRMAN AGUERO: You are telling also Dr.

13 Book that a person that had the concept that the

14 Sports was delivered by the networks can make the same

15 mistake on Movies, on News and Public Affairs

16 programs.

17 The confusion in his mind could be in

18 general of all the claimants in here -- all the

19 categories in here. No?

20 THE WITNESS: I'm saying that, if you make

21 the assumption, which I do not agree with --

22 CHAIRMAN AGUERO: You make assumption,

23 yes.

24 THE WITNESS: Right. -- that he didn't

25 hear that sentence up front or the person didn't

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understand or forgot that he heard it about ABC, CBS and NBC, which I think was what you had asked me to assume --

COMMISSIONER DAUB: Dr. Book, that factor would have entered into Bortz survey of confidence intervals. Correct? -- the fact that respondent didn't hear it, that he or she were not to include network sports programs. That's part of the confidence interval that he figured in his survey. Correct?

THE WITNESS: Oh, yes. You mean that the results that he eventually got out of the 'whole survey, the confidence interval around that --

COMMISSIONER DAUB: That's one of those factors that entered into that.

THE WITNESS: That's one of the factors that would play a role in that. Oh, yes.

BY MR. OLSON:

Q. Let me follow up on Commissioner Daub's point. Are you suggesting that -- Let's suppose you had a questionnaire that was simply defective. It was just not a well designed questionnaire, didn't ask the right kinds of questions. Are you suggesting that the confidence intervals around the results of that survey will solve the problem created by the defective

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survey, has been designed properly and correctly.

What the confidence interval does is it says, in effect, -- With a lot of statistical things thrown in there, it says, in effect, that, okay, we know that when we question 187 people or whatever the total number that we're questioning here is, there is going to be a few that don't quite get every word properly, don't quite understand exactly the meaning, or just happen to have a bad day and gave some answer that's off the wall, or whatever it may be, and those random sort of inappropriate answers are then accounted for in the confidence interval.

So if I understand the question here, which I agree with, I think that we're saying that, if somebody did not hear that wording properly or forgot about it or whatever and then gave an answer that did take into account the network programming --

COMMISSIONER DAUB: But your presumption has to be the questionnaires are designed properly.

THE WITNESS: Well, in order for the whole mechanism of the confidence intervals to work, they start from the basis that the questionnaire is designed properly, that the sampling has been done properly, in other words that all the steps have been done in the way that an appropriate, statistically

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questionnaire?

MR. GARRETT: I'm sorry. Could you just explain what you mean by defective questionnaire?

BY MR. OLSON:

Q. Let's suppose that you had done the Bortz survey, and you had completely forgotten to mention that network programming was supposed to be excluded. All right? Do you understand that?

A. Okay. In other words, that sentence there was -- did not appear?

Q. Right. Now would you agree with me that that would be a defectively designed survey, if you were trying to get only at non-network programming?

A. It would **not** be a well designed survey, I would agree. Yes.

Q. And if you were to do a survey using that poorly designed questionnaire, would you give meaning to the results within the confidence intervals, in spite of the fact that it was a poorly designed questionnaire?

A. Okay. The purpose of the confidence interval and all of the statistics and everything that lie behind that is to account for random errors, misunderstandings, whatever, that might occur with respondents, assuming that the survey, the whole

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1967

valid survey would be conducted, and then the confidence interval accounts for any of these vagaries in the responses.

BY MR. OLSON:

Q. Dr. Book, let me also follow up on Chairman Aguero's point. To your knowledge, do Public Television stations typically carry ABC, CBS or NBC network programs?

A. Do Public -- PBS stations? Are we on the PBS category?

Q. Yes. Do Public Television stations typically carry ABC, CBS and NBC network programs?

A. Based on my familiarity with PBS, they do not typically carry those programs.

Q. So if a respondent mistakenly included ABC, CBS or NBC network programs in his or her answers, they wouldn't be likely to increase their percentage for PBS, Educational and Other programming carried by a specific Public Television station. Correct?

A. Again, given your initial assumption which, as I said, I certainly have problems with, this conclusion which you are drawing would seem reasonable.

Q. Just to go back to my original

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1968

1 hypothetical, Dr. Book, suppose that a respondent was
2 confused only about a specific type of network
3 programs, and that was network Sports programs. Can
4 you accept that hypothetical for a moment?

5 A. It's hard to envision how that would
6 happen, but if we stipulate that, I'll take it.

7 Q. All right'. Then that could inflate the
8 share given to Sports compared to the share that
9 Sports would have gotten if the respondent had
10 correctly understood the question. Correct?

11 A. If you're saying that this one particular
12 respondent misunderstood the question and only
13 misunderstood it in terms of the Sports category, that
14 might induce that respondent to give a somewhat higher
15 share to Sports. That's certainly possible.

16 Q. Dr. Book, turning to page 3 of your
17 written testimony for a moment, if you look at the
18 very last sentence on that page -- Let me just read
19 it into the record. "The 1989 Bortz survey asked
20 cable operators to do what they often do as part of
21 their job, namely, to allocate percentages of a fixed
22 budget to different program categories based on the
23 value of those categories in attracting and retaining
24 subscribers."

25 Is the assertion that cable operators

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1965

1 often do that particular thing as part of their job
2 important to your conclusion about the validity of
3 this survey?

4 A. I would say it's one factor that I
5 considered, and in my mind it increased the
6 credibility of the survey results, based on that
7 statement.

8 Q. Are you hesitating to say it was an
9 important factor?

10 A. I would say it was an important factor,
11 certainly not the only or most important factor

12 Q. In your experience doing surveys over the
13 years, if it's important to you that you talk to
14 people who have had a particular experience, do you
15 customarily have a screening question to find out
16 whether the respondents have had that experience?

17 A. Certainly, in consumer surveys there's
18 almost always a screening procedure, one or two or
19 whatever screening questions, so that the survey is
20 being conducted among the particular group of
21 consumers that you want for that survey.

22 So on consumer surveys I would say almost
23 invariably there is a screening process before the
24 survey starts.

25 On executive interviewing or calling

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1970

1 people in business positions or other professional
2 positions, there may or may not be the need for a
3 screening question. It just depends on the objectives
4 and the purpose of the survey.

5 Q. It is perfectly possible to have a
6 screening question in a survey done of business
7 people. Right?

8 A. Oh, yes.

9 Q. And if there is something you're
10 particularly interested in about the business people
11 that you are talking to, you can certainly screen for
12 that characteristic. Right?

13 A. You can. It may not always be the most
14 appropriate thing to do, but you certainly can.

15 Q. Let me just return for a moment to a topic
16 we were discussing a few minutes ago. You mentioned
17 the survey that you had done for United Video relating
18 to cable subscriber and nonsubscriber views about WON.
19 Have you -- Was that a Constant Sum survey?

20 A. I believe there was a form of Constant Sum
21 question within the survey. It was a fairly lengthy
22 survey. This goes back to the point that was raised,
23 I believe, here earlier today.

24 My surveys tend to be somewhat longer and,
25 you know, we cover a lot of ground on them. You know,

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1971

1 the Constant Sum, I believe, was a part of the long
2 list of questions that we were asking.

3 Q. I believe in response to a question from
4 Mr. Lane, you indicated that you had done perhaps
5 between five and ten Constant Sum surveys in the cable
6 business. Is that right?

7 A. Yes.

8 Q. Do you recall how many of those were of
9 cable operators and how many were of cable
10 subscribers?

11 A. They were mostly cable subscribers.
12 Again, without checking our project files, I wouldn't
13 be able to put a number on it. Certainly, more among
14 cable subscribers than among operators.

15 Q. Let me ask you just a couple of questions
16 about confidence intervals. If you had a survey in
17 which you have a particular question and you only ask
18 that question of, let's say, half of the respondents,
19 for some reason -- Let's suppose that there are 100
20 respondents, and you only ask fifty of them that
21 particular question. -- what sample size number would
22 you use in calculating the confidence intervals for
23 that particular question?

24 A. It's hard to say without knowing a little
25 more about the survey. It really depends on why the

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1972

1 other fifty were not asked the question. I mean, it

2 basically depends on whether we're talking about a

3 segmented sample here where there are two completely

4 different groupings of people or a more uniform sample

5 and, for whatever reason, the question was not asked

6 to half the people.

7 Q. Suppose it's the latter.

8 A. And what would be the -- Again, it would

9 depend on why the other fifty were not asked the

10 question.

11 Q. Well, under some circumstances you would

12 use a sample size of 100 for a particular question

13 when only fifty people had been asked that question?

14 A. Yes. Yes, I can certainly think of some

15 possibilities there.

16 Q. Such as?

17 A. Well, going back to my movie market

18 research days, we would often ask people first, have

19 you heard of such and such movie. These are movies

20 that have not yet been released or maybe just coming

21 out that weekend. Have you heard of such and such

22 movie, and maybe, say, only half the people that we

23 interviewed said they had heard of it.

24 Then we would go on to the next question,

25 which is how interested would you be in seeing it, how

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1974

CHAIRMAN AGUERO: Do people like music in

2 the film industry? They look for musical shows or --?

THE WITNESS: Well, this was -- When I was

4 involved in this, it was back in the early Eighties,

and music was not that popular. Today, I'm not sure.

6 CHAIRMAN AGUERO: Thank you.

7 BY MR. OLSON:

8 Q. Dr. Book, I believe you said you usually

9 retain outside firms to actually make the telephone

10 calls in the course of conducting your surveys. Is

11 that right?

12 Yes.

13 Q. But you're familiar, to some extent, with

14 the standards of professional excellence in the field

15 of actually making the phone calls. Right?

16 A. Yes.

17 Q. Is it fair to say that it is a generally

18 accepted principle that, when an interviewer is

19 talking to a respondent on the other end of the line,

20 that they should record contemporaneously whatever it

21 is that's important about the interview?

22 A. I'm not sure what you mean by

23 contemporaneously.

24 Q. As opposed to remembering some days or

25 weeks or months later what it is that somebody said

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1973

likely would you be to go out and see that movie this

2 weekend?

3 Well, we wouldn't ask the people that said

4 that they had never heard of it. The presumption is,

if they never heard of it, you know, they're not going

6 to say they're going to go out and see it.

7 So we would only ask the second question

8 among those people that said they heard of it, but the

9 total sample would be used for the confidence

10 interval, because the presumption is that all of the

11 people that said they never heard of it, at least in

12 the immediate period, are not going to go out and see

13 it.

14 CHAIRMAN AGUERO: Dr. Book, has any

15 corporation ever ordered you to have a survey in the

16 film industry on how to judge sex, music, drama,

17 action and then some producer may produce according

18 to the survey, or isn't it a relevant question?

19 THE WITNESS: No, no. We've done that.

20 CHAIRMAN AGUERO: On sex or --?

21 (LAUGHTER)

22 THE WITNESS: I'm not sure if sex was in

23 there in the list, but some of those other things,

24 drama and comedy and music and those things we've

25 asked about. We stay away from sex.

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1975

1' to them.

2 A. Still not clear. Are you saying --

3 Q. Let me lay the groundwork. The people who

4 work for these companies that do telephone surveys --

5 They do lots of different surveys. Right?

6 A. Yes..

7 Q. For lots of different clients?

8 A. Yes.

9 Q. They're on the phone, I assume, much of

10 the day every day, Right?

11 A. Certain shifts, yes.

12 Q. But -- I don't mean that they work twenty-

13 four hours a day, but during the time that they're

14 there, their job is to make telephone calls.

15 A. That's correct.

16 Q. So over time, they make hundreds or

17 thousands of telephone calls. Right?

18 A. Right.

19 Q. If they are like you or me, they would

20 have a very hard time remembering a specific telephone

21 call after the passage of time, given that they had

22 made hundreds or thousands of other phone calls in the

23 meantime. Correct?

24 A. You're saying they would have trouble --

25 The interviewer would have trouble remembering what

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1976

1 a respondent said?

2 Q. What a specific respondent said, if he or

3 she did not write it down at the time.

4 A. I think that's reasonable.

5 Q. And because of that concern, isn't it a

6 principle of good survey practice that interviewers

7 are supposed to write things down at the time they are

8 doing the interview, as opposed to trusting their

9 memory to aid them sometime in the future?

10 A. My knowledge and experience of this is

11 that the procedure is that the interviewer, while on

12 the phone, asks the question and marks down -- Often,

13 it's only a check or an X to fill in a box, whatever

14 it is, or a circle, a number or whatever it may be.

15 -- and puts that mark down as soon as the interviewer

16 hears it over the phone.

17 And that's good practice, isn't it?

18 A. Yes.

19 Q. In your experience, is it good practice

20 for interviewers to not write things down but then,

21 some weeks or months later, to rely on their memories

22 to tell them what happened in a particular interview?

23 A. Weeks or months after the interview, the

24 whole survey has been completed?

25 Q. Right.

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1978

Are there any guidelines in the survey

research field about how many different interviewers

should be involved in a particular survey? For

example, would it be appropriate for a single

interviewer to do all the telephone interviews in the

course of a particular survey?

A. That's basically an issue that is

determined by what your total requirements are. In

other words, it's decided in advance that you want to

have so many completed surveys 100, 200, 1,000,

10,000, whatever it may be. Then the survey company

will allocate a certain number of interviewers that

will be sufficient number to complete the total number

of interviews within the specified time period.

So it's basically a trade-off between how

many you want to complete, how much time you're

allowing for the survey, and then the company

calculates how many interviewers they are going to

need to complete that survey.

Q. Well, supposing that you weren't in any

particular rush.

A. I've never been in that situation,

definitely. I guess it's possible.

Q. Is there any concern in the survey

research field about the possibility that use of a

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1977

1 A. No, I don't think that would be considered

2 good practice.

3 O. Dr. Book --

4 CHAIRMAN AGUERO: Mr. Olson, I don't want

5 to interrupt you, but how long --

6 MR. OLSON: I would say, probably --

7 CHAIRMAN AGUERO: Do you not propose to

8 have a little break before the redirect?

9 MR. OLSON: No more than five minutes

10 more.

11 CHAIRMAN AGUERO: Thank you very much.

12 MR. OLSON: We may be able to just go

13 straight through and go home.

14 MR. GARRETT: Let's take a break right

15 now.

16 (Whereupon, the proceeding recessed

17 briefly at 2:55 p.m. and resumed at 3:06 p.m.)

18 CHAIRMAN AGUERO: Mr. Olson.

19 MR. OLSON: Thank you very much, Mr.

20 Chairman.

21 BY MR. OLSON:

22 Q. Dr. Book, let me ask you one other

23 question about good practice on the part of firms like

24 Burke that actually, do the telephone calls that are

25 the heart of a survey.

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1979

single interviewer to do all the interviews in a

particular survey could increase the error rates

because of some particular way that that individual

conducts the interviews?

A. Not that I know of. I really can't think

of anything along those lines. There's also the point

here that there is usually a pre-test of surveys, and

in fact the Bortz survey had a pre-test where you go

out and you do a small number, whatever it may be,

ten, fifteen interviews, and someone listens to --

that is, someone from the supervising company listens

to the interviewers as they are doing those pre-test

surveys.

The purpose there is to spot any sort of

a problem like you are mentioning where there might

be one interviewer who is always going too fast or who

is always speaking in a way that is not quite

understood. Then, of course, that would be weeded out

in the pre-test process.

Q. Let me ask you about some other principles

that are generally applicable to survey research. Is

it correct, Dr. Book, that the wording of a survey

question can be quite important to the results?

A. The wording of the question is certainly

important to the results.

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1980

Q. And the overall design of the survey can be very important to the results?

A. Yes.

Q. And the order in which questions are asked can be very important to the results?

A. Yes. There's a little more of a -- There's some dispute over that. I mean, different researchers have different theories and views on how important the order is, and even what the proper order is; but at least in a general way, I would agree that the order of the questions has some importance.

Q. Let me ask, would there be unanimity in the survey research field that it's important if you have a key question at the end of a survey, not to bias the answers to that question inadvertently in asking earlier questions?

A. I think even a little broader than that. It's important not to bias -- What you're trying to do when you're designing and implementing any survey is to minimize any possible bias. That's sort of the cardinal principle that runs through all of this.

So any of these things that you are mentioning that might be done to minimize bias should be done.

Q. So just to explore that topic a little bit

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1982

interviewers should be unbiased. The respondents -- In some cases, what you're trying to find out is whatever the biases are, the thoughts, attitudes, behavior, whatever, of respondents are.

So I don't think you can really characterize respondents as being biased or unbiased. They're just -- You know, they're who you're talking to.

Q. Well, let's suppose I were doing a survey about who the best lawyer is in town, and suppose that it was a contest between Mr. Garrett and Mr. Koenigsberg. Suppose that we discovered that --
CHAIRMAN AGUERO: Koenigsberg is from New York.

(LAUGHTER)

MR. GARRETT: 'I guess I win that.

BY MR. OLSON:

Q. Suppose you did a survey of ten people, and it turned out that in that ten were Mr. Koenigsberg's mother and his brother and his cousin and his uncle.

MR. GARRETT: I'd still win.

(LAUGHTER)

BY MR. OLSON:

Q. Would that kind of a bias on the part of

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1981

further, it's important, obviously, to make sure that the interviewers are unbiased. Correct?

A. Yes.

Q. And I noticed when we were discussing the Nielsen study a couple of weeks ago that, when they pass out diaries, they exclude people who work in the television business or in the cable business. You're familiar with that kind of exclusion?

A. Well, I mean, again I'll take your word for it, if that's the prelude for a question. I'm in the cable television business and I do know I received a diary a while ago from Nielsen, and I was a Nielsen respondent. I don't believe they asked me if I had anything to do with the cable business. They just sent the diary, and I did it.

Q. Well, let me just ask you, is it important in general that the respondents to a survey be unbiased?

A. That the respondents be unbiased?

Q. Right.

A. Well, again I'm not -- I may need some clarification. Before, we were talking about the interviewers being unbiased.

Q. Right.

A. On that, there's no question. The

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1983

the respondents concern you?

A. Certainly, that would.

Q. Because they're members of the same family?

A. Yes.

Q. What tests did you conduct, Dr. Book, to determine whether or not the wording of the questions in the Bortz survey was appropriate?

A. I reviewed the material, read through it quite carefully, and I did not conduct any test if, by that, you mean some type of statistical test or independent third party test. That, I did not do.

Q. What I mean by test is indeed some kind of empirical or statistical checking.

A. No, I did not.

Q. What tests of that type did you do to look at whether the order in which questions were asked was appropriate in this Bortz study?

A. Again, only what I've said. I base my opinions on my own reading and review of the material that I received, which was the study itself, and my own experience in the field, but not on any empirical or third party testing.

MR. OLSON: I have no further questions, Mr. Chairman.

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1984

CHAIRMAN AGUERO: Thank you, Mr. Olson.

Devotional Claimants are not here. Mr. Garrett, redirect?

MR. GARRETT: A couple of questions, Mr. Chairman.

REDIRECT EXAMINATION

BY MR. GARRETT:

Q• Dr. Book, Mr. Lana ha asked questions about stratified random sampling. Do you recall that?

A. Yes.

Q. And you recall that he posed a hypothetical to you involving two strata, one with a 100 percent response rate and one with a zero percent response rate?

A. Yes.

Q. Let me move from the hypothetical and ask you to focus on that general issue with specific reference to the Bortz study. All right?

How many strata wee there in the random sample picked by Bortz's experts?

A. There were four.

Q. What was the response rate for each of those strata?

A. In strata No. 4 the response was 22 completed surveys out of 33 in the original. sample

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1986

O. The numbers you just gave us are on the basis of the 237?

A. Based on the 237, yes.

Q. Now three of the strata are in the 80, 80, 83 percent category, and one stratum is in the 67 percent category? Did you say that?

A. Yes, that's correct.

Q. All right. Now does the difference there between one stratum and the other three in response rate affect your confidence in any way in the survey results?

A. I don't believe it would. The percentage response rate that was obtained here are -- First of all, they're all high. Sixty-seven percent would be considered a high response rate, as well as 80, 83 percent. As I had mentioned earlier, 50 percent is considered sort of the minimal acceptable level.

So all of them are quite satisfactorily high response rates, and the difference between the 67, the lowest one, and the 80 or 83, highest one, is not wide enough to make any significant difference, as far as I would be concerned, in the confidence in the results.

Q. Let me ask you to turn to page 8 of the Bortz Report. You see the table there that says

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1985

frame. Strata 4 was the -- These are in descending order of the amount of payments made.

Strata 3, it was 64 out of 80 surveys;

Strata 2, 53 out of 66; and Strata 1, 48 out of 58, and I'm down to percentages ere.

Q. Why don't you just give those for the record?

A. Strata 4 was a 67 percent response rate. Strata 3, 80 percent; Strata 2, 80 percent; and Strata 1, 83 percent.

Q. Now also in doing those calculations, Dr. Book, you recall, do you not, that the initial sample that was picked by Mr. Bortz's experts had 244 cable systems in it?

A. Yes.

Q. And there were seven systems that were not included within that, because of the various reasons that Mr. Bortz expressed during his testimony and in his report?

A. Yes. I'm aware of that.

Q. How do we calculate the response rate? Is it on the basis of the 237 or the 244?

A. I believe it should be on the basis of the 237, which would be the number actually attempted to contact.

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1987

"Results by Stratum"?

A. Yes.

Q. Which was the stratum that had the 67 percent response rate?

That was the bottom one there, the 300,000 or more.

Q. Is the allocation that was made by respondents in that stratum for Sports significantly different than the allocation made by respondents in the other categories for Sports?

A. No. I would say it isn't. If you look at the Sports allocation, which here is 34.7 percent in that fourth stratum, and then look at the total allocation, which is the next number down that really is the average for all the strata, 34.2 percent, that difference of half a percent would not be significant at all.

Q. Mr. Lane also asked you about the program categories included in the Constant Sum question. Do you recall that?

A. Yes.

Q. And he asked you whether or not the categories as defined by Bortz were consistent with the categories as defined by the Tribunal. Do you recall that?

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1988

1 A. Yes.

2 Q. Have you had a chance over the noon recess

3 to look at the Advisory Opinion of the Tribunal dated

4 May 16, 1986 concerning their definitions of the

5 different program categories in this proceeding?

6 A. I did look at it briefly, yes.

7 Q. Let me hand you a copy of that. Now would

8 you compare the definitions in the Bortz survey of the

9 different program categories to the Tribunal's

10 definitions?

11 Let me ask you this. Is it fair to say

12 that there may be differences between the two?

13 A. Well, there are differences in the

14 definitions here in some of the categories that are

15 in the question.

16 Q. Explain the nature and the significance

17 of those differences.

18 A. Well, one that might be mentioned --

19 There's a definition here of Syndicated Series and

20 Specials. The term in quotation marks is "Syndicated

21 Series and Specials." On the survey it says

22 Syndicated Shows and Series. There's a slight

23 difference in wording there, Series and Shows versus

24 Specials and Series.

25 Then there's a further explanation of what

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1990

overall results of the survey are the differences

between the Tribunal's wording and Bortz's wording of

category definitions?

3 A. I would not call the differences

4 significant. Seems to me that the wording used in the

5 Bortz survey captures the meaning of each of these

6 categories and does it in as brief a description as

7 possible, as few words as possible; and whatever

8 marginal differences there may be between the

9 Tribunal's definitions and the survey definitions, I

10 don't think they could make much of a difference in

11 the results of the survey.

12 MR. GARRETT: I have no further questions.

13 Thank you, Mr. Chairman.

14 COMMISSIONER DAUB: Thank you for coming.

15 CHAIRMAN AGUERO: Any questions? No

16 questions?

17 MR. CASSLER: Just a request.

18 CHAIRMAN AGUERO: Go ahead.

19 MR. CASSLER: Is it possible to get from

20 the witness or the parties a textbook definition of

21 confidence intervals, exactly what it includes and

22 what it does not include?

23 CHAIRMAN AGUERO: Thank you, Dr. Book.

24 We will reconvene tomorrow morning at ten

25

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1989

1 Syndicated Series and Specials are; whereas, in the

2 survey it simply says Syndicated Shows and Series.

3 So my sense of this is that the Tribunal's notation

4 here is providing further definition of some of these

5 categories.

6 Q. Would the Tribunal's definitions be

7 appropriate to use for purposes of a survey such as

8 the Bortz survey?

9 A. Well, they really could not be used in

10 this kind of a survey, at least as they stand on this

11 notice. The wording is just not what you would use

12 in a Survey. when talking to cable operators.

13 first of all, it's fairly wordy. I mean,

14 there's a lot of words in here, and it's just not

15 necessary. I mean, it's not adding anything. It's

16 just, if anything, making things a little bit more

17 confusing.

18 So I certainly would not recommend using

19 what is here, one, two, three, four, five, six lines

20 of words for Syndicated Series and Specials, when you

21 can convey all of that information just by saying

22 Syndicated Shows and Series.

23 I think that brevity is certainly

24 preferable to a more elaborate explanation.

25 Q. How significant, in your judgment, to the

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1991

1 o'clock with Dr. Peter Lemieux. Thank you very much.

2 (Whereupon, the Tribunal adjourned for

3 the day at 3:30 p.m.)

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Date: OCTOBER 3, 1991

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represents the full and complete proceedings of the
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SCHEMM

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Certificate of Service

I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Samuel Book Direct Oral Testimony (JSC Written Direct Statement Vol. III) to the following:

Canadian Claimants Group, represented by Lawrence K Satterfield served via Electronic Service at lksatterfield@satterfield-pllc.com

Broadcast Music, Inc. (BMI), represented by Janet Fries served via Electronic Service at janet.fries@dbr.com

National Association of Broadcasters (NAB), represented by David J Ervin served via Electronic Service at dervin@crowell.com

Devotional Claimants, represented by Jessica T Nyman served via Electronic Service at jessica.nyman@pillsburylaw.com

Multigroup Claimants, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

MPAA-represented Program Suppliers, represented by Alesha M Dominique served via Electronic Service at amd@msk.com

Public Broadcasting Service (PBS), represented by Ronald G. Dove Jr. served via Electronic Service at rdove@cov.com

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

SESAC, Inc., represented by Christos P Badavas served via Electronic Service at cbadavas@sesac.com

Signed: /s/ Michael E Kientzle